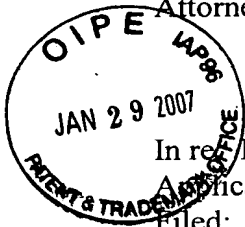


01-30-07

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PATENT



Attorney Docket No.: 5051-445

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Moyer et al.

Application No.: 09/912,072

Filed: July 24, 2001

For: *Identification of Poinsettia Cultivars*

Confirmation No.: 3267

Group Art Unit: 1634

Examiner: S. Bausch

Date: January 29, 2007

Mail Stop Appeal Brief-Patents
Commissioner for Patents
Box 1450
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**TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 41.37)**

1. Transmitted herewith is the APPEAL BRIEF for the above-identified application, pursuant to the Notice of Appeal filed on November 27, 2006.

2. This application is filed on behalf of
☐ a small entity.

3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:
☐ small entity \$250.00
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Attorney Docket No.: 5051-445



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APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed on November 27, 2006.

REAL PARTY IN INTEREST

The real party in interest North Carolina State University (NCSU), the assignee of the rights to this application by virtue of assignment from the inventors to NCSU, recorded at the United States Patent and Trademark Office on January 7, 2002 on Reel 012444, Frame 0066.

RELATED APPEALS AND INTERFERENCES

Appellants are aware of no related appeals or interferences that would be affected by the present appeal.

STATUS OF CLAIMS

Claims 1-7, 10, 11, 21-24, 27-30, 52, 63, 64 and 69-74 are pending in the present application as of the filing date of this Appeal Brief. As of the filing date of this Appeal Brief, claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69-74 remain rejected under 35 U.S.C. § 103(a) and claims 2, 4, 10, 11, 22, 27-29, 52 and 64 remain objected to for being dependent on rejected claims. Further, claims 70-74 stand rejected under 35 U.S.C. § 112, first and second paragraphs. In order to reduce the issues to be considered on appeal, appellants have canceled claims 70-74 herein without prejudice or disclaimer.

Appellants appeal the rejection of claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69. A copy of claims 1-7, 10, 11, 21-24, 27-30, 52, 63, 64 and 69 is attached hereto as **Appendix A**, presenting the claims at issue as twice rejected in the Final Office Action dated August 2, 2006.

STATUS OF AMENDMENTS

All amendments made by Appellants during prosecution are believed to be entered as indicated by the Final Office Action dated August 2, 2006.

SUMMARY OF THE INVENTION

Ornamental plants such as begonias, geraniums, impatiens, poinsettias and the like comprise a large and profitable market in the United States. Many ornamental plants such as poinsettias are vegetatively or clonally propagated (*i.e.*, by cuttings from stock plants). Plants produced in this manner share the same genetic and phenotypic characteristics of the stock plant. Distributors, growers and buyers of ornamental plants are often concerned about the authenticity of the particular variety or cultivar of plant being grown or sold. Accordingly, a need exists for a method to reliably and accurately determine if a particular plant is the same cultivar as another cultivar, or if a particular plant is a member of a particular family or breeding program of plants.

Over the past 10 years, genetic mapping technologies utilizing analyses of restriction fragment length polymorphisms (RFLP), random amplified polymorphic DNA (RAPD), simple sequence repeats (SSR) and amplified fragment length polymorphisms (AFLP) have been used for identifying genetic markers for desirable traits or phenotypes in plants. These techniques have also been useful adjuncts to genetic and breeding programs for genome mapping and marker-assisted selection, respectively. Using these technologies, attempts have been made to develop cultivar-specific fingerprints for identification.

Unfortunately, the RAPD and RFLP technologies used in previous attempts to fingerprint cultivars lacked the resolution to distinguish between genotypes. While AFLP and SSR techniques generally have sufficient resolution to distinguish between certain genotypes, these methods have heretofore been unable to overcome the problems posed by the inherent heterogeneity in regions of plant genomes that contain polymorphisms, but which are unrelated to the regions of the genomes that are related to cultivar identity. In

particular, these technologies have been limited in their use for reliable cultivar identification of vegetatively propagated plants due to recognized and unrecognized regions of heterogeneity in these plant genomes.

The present inventors have examined over 100 amplified restriction fragments that exhibit polymorphisms between cultivars of the Poinsettia genome, a clonally propagated crop. In particular, the inventors have identified amplified restriction fragments that are polymorphic between genotypes, and which in specific combinations also correlate with cultivar identity. The discovery of regions of the genome that are involved in cultivar differentiation (as distinguished from those that appear as polymorphisms but are in fact not related to cultivar identity) provides an advantageous and significant advancement for the genomic fingerprinting of plants generally, and more specifically of vegetatively propagated plants such as poinsettias.

The present application includes independent claims 1, 3, 21, 63 and 69. Claim 1 is directed to a method of estimating a genetic relationship, if any, between a poinsettia plant and a known poinsettia cultivar, by obtaining a DNA fingerprint of the poinsettia plant's genomic DNA by AFLP, the fingerprint being a collection of amplified restriction fragments; comparing the fingerprint so obtained with a genomic DNA fingerprint of the known poinsettia cultivar; and estimating the genetic relationship between the poinsettia plant and the known cultivar by determining the degree of similarity, if any, between the fingerprints. (*See Specification, for example, at least on page 4, lines 14-24*).

Claim 3 is directed to a method of assessing the breeding history of a first poinsettia plant. This method also involves obtaining a DNA fingerprint of the genomic DNA of a first poinsettia plant, where the fingerprint comprises a set of amplified restriction fragments. The fingerprint of the first poinsettia plant is compared with a fingerprint of the genomic DNA of the second poinsettia plant that is a representative member of a specific breeding family, where the fingerprint comprises a set of amplified restriction fragments. A profile index value is generated based on the comparison of the fingerprint of the first poinsettia plant with the fingerprint of the poinsettia plant that is a representative member of a specific breeding family. Known mathematical models may be used to determine whether the two poinsettia plants belong to a representative breeding family. (*See Specification, for example, at least on page 4, lines 14-24*).

Claim 21 is directed to a method of determining the degree of similarity of a first poinsettia plant to a second poinsettia plant, by obtaining a DNA fingerprint of the genomic DNA of a first poinsettia plant by AFLP, wherein the fingerprint comprises a set of amplified restriction fragments; comparing the fingerprint of the first poinsettia plant with a fingerprint of the genomic DNA of the second poinsettia plant, wherein the fingerprint comprises a set of amplified restriction fragments; and generating a profile index value based on the comparison of the fingerprint of the first poinsettia plant with the fingerprint of the second plant, wherein a profile similarity index value of about 1 or a dissimilarity value of about zero indicates that the two poinsettia plants are genetically similar. (See Specification, for example, at least on page 4, lines 25-34 through page 5, lines 1-16).

Claim 63 is directed to a method of determining whether a poinsettia plant is a representative of a known poinsettia cultivar, by obtaining a first DNA fingerprint of the genomic DNA of a poinsettia plant by AFLP analysis, and then comparing the first fingerprint with a second fingerprint of the genomic DNA of the known poinsettia cultivar; wherein the poinsettia plant is a representative of the known poinsettia cultivar if the fingerprint of the poinsettia plant and the fingerprint of the known poinsettia cultivar have the same complement of polymorphic bands. See Specification, for example, at least on page 7, lines 1-8.

Claim 69 is directed to a method of distinguishing a poinsettia cultivar from a known poinsettia cultivar, by obtaining a first DNA fingerprint of the genomic DNA of a poinsettia plant by AFLP analysis and then comparing the first fingerprint with a fingerprint of the genomic DNA of the known poinsettia cultivar, wherein the poinsettia plant is not a representative of the known poinsettia cultivar if the fingerprint of the poinsettia plant and the fingerprint of the known poinsettia cultivar are not essentially the same. (See Specification, for example, at least on page 8, lines 3-10).

ISSUES

1. Whether claims 1, 3, 5-7, 21, 23, 24, 63 and 69-74 are properly rejected as unpatentable under 35 U.S.C. § 103(a) over Ling et al. (*HortSci* 32: 122-124 (1997)), in view of Loh et al. (*Annals of Bot.* 84:155-161 (1999)) as defined by Dice et al. (*Ecology* 26:297-302 (1945)).

2. Whether claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69-74 are properly rejected as unpatentable under 35 U.S.C. § 103(a) over Ling et al. in view of Barcaccia et al. (*J. Horticultural Science and Biotechnology* 74:243-50, (1999)) as defined by Dice et al.

3. Whether claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69-74 are properly rejected as unpatentable under 35 U.S.C. § 103(a) over Ling et al. in view of Sukhwinder et al. (*Crop Improvement* 25:15-20 (1998)) as defined by Dice et al.

4. Whether claims 1, 3, 5, 6, 21, 23, 30, 63 and 69-74 are properly rejected as unpatentable under 35 U.S.C. § 103(a) over Ling et al. in view of Barker et al. (*Genome* 42:173-183 (1999)) as defined by Tullos (Offprint from Palm and Chapel, eds., (1997)).

GROUPING OF CLAIMS

Appellants submit that the claims do not stand or fall together, and the following claim groupings are appropriate as each of the claim groupings is separately patentable.

- Group I: Claims 1 and 2;
- Group II: Claims 3, 4, 5, 6, 10 and 11;
- Group III: Claims 21-24 and 27-30;
- Group IV: Claims 52, 63 and 64; and
- Group V: Claim 69.

ARGUMENT

I. Legal Standard of Obviousness

A determination under 35 U.S.C. § 103(a) that an invention would have been obvious to someone of ordinary skill in the art is a conclusion of law based on fact. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1593 (Fed. Cir. 1987), *cert. denied*, 107 S.Ct. 2187. The Patent Office has the initial burden under §103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, the Patent Office must satisfy three requirements. First, the prior art reference or combination of references must teach or suggest all of the limitations of the claims. *See In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) ("All words in a claim must be considered in judging the patentability of that claim

against the prior art"), *see also Princeton Biochemicals, Inc., v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005). Furthermore, the teachings must come from the prior art, not from the Appellant's disclosure. *See In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

Second, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some teaching or suggestion that would have motivated the skilled artisan to modify a reference or to combine references. *Iron Grip Barbell Co., Inc., v. USA Sports, Inc.*, 392 F.3d 1317, 1320 (Fed. Cir. 2004), (*see also In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) (teachings of a reference can be combined only if there is some suggestion or incentive to do so) (emphasis in the original)). Such a requirement prevents a hindsight-based obviousness analysis based on the inventor's disclosure. *Ecolchem Inc., v. So. Cal. Edison Co.* 227 F.3d 1361, 1371-72 (Fed. Cir. 2000). In addition, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. §2143.01, citing *In re Mills*, 916 F.2d 680, 682 (Fed. Cir. 1990).

As emphasized by the Court of Appeals for the Federal Circuit, to support combining references, evidence of a suggestion, teaching, or motivation to combine must be **clear and particular** and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999), *see also In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (there must be particular evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed).

The third requirement to establish a *prima facie* case of obviousness is that the proposed modification or combination of the prior art must provide a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *See Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1209 (Fed. Cir. 1991); *see also In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

In the present case, a *prima facie* case of obviousness has not been established with regard to the combinations of presently cited references. No clear and particular evidence has been presented from the prior art that provides any motivation to combine. Further, no evidence has been presented from the prior art that one of ordinary skill in the art at the time the invention was made would have considered the proposed combinations to have any

reasonable expectation of success. Thus, the outstanding rejections fail to satisfy the Office's burden necessary to maintain an obviousness rejection.

II. The Rejections

In the Official Action, dated August 2, 2006 (hereinafter the Final Action), claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69 stand rejected under 35 U.S.C. § 103(a) as being obvious over four different combinations of references: Ling et al. (*HortSci* 32: 122-124 (1997)), in view of Loh et al. (*Annals of Bot.* 84:155-161 (1999)) as defined by Dice et al. (*Ecology* 26:297-302 (1945)); Ling et al. in view of Barcaccia et al. (*J. Horticultural Science and Biotechnology* 74:243-50, 1999)) as defined by Dice et al.; Ling et al. in view of Sukhwinder et al. (*Crop Improvement* 25:15-20 (1998)) as defined by Dice et al.; and Ling et al. in view of Barker et al. (*Genome* 42:173-183 (1999)) as defined by Tullos (Offprint from Palm and Chapel, eds., (1997)).

Each of these rejections is grouped separately above, and argued separately below. However, with regard to each rejection it is relevant first to consider how far removed poinsettia is to the plants used in the studies in the cited references when considering unpredictability of the application of AFLP analysis to any particular plant. The taxonomic relationships of the plants, poinsettia, willow, rice, *Pelargonium*, and *Caladium* are presented in a document identified as Appendix A, which was submitted concurrently with the response dated May 12, 2006 (copy attached at Appendix B). Further, these taxonomic relationships are discussed in detail in the Supplemental Declaration by Dr. Moyer under 37 C.F.R. § 1.132 (submitted concurrently with the response, dated May 12, 2006; hereinafter "the Moyer Supplemental Declaration") (copy attached at Appendix B).

As these documents show, two out of the four plants from the cited publications are not even in the same taxonomic class as poinsettia, that of the dicots. (Supplemental Moyer Declaration, para. 4). Of the plants cited in the publications that are dicots, willow and geranium, only geranium falls into the same subclass, *Rosidae*, as poinsettia, and after that poinsettia and geranium are completely divergent. *Id.* at para. 7 and 8. Just considering the *Rosidae* subclass, one finds that it is incredibly diverse, containing within it the apple, legume, carrot and dogwood families, in addition to the geranium family, to which *Pelargonium* belongs and the spurge family (*Euphorbiaceae*), to which poinsettia belongs. *Id.* at para. 8. As Dr. Moyer states, even within the single genus *Euphorbia*, of which poinsettia is a member, there is such incredible diversity that one of skill in the art would not

generalize findings with one member to that of another member, much less generalize findings with one plant to another that is even more distantly related. (Moyer Supplemental Declaration, para. 8)

One of skill in the art would be well aware of the distant relationship between poinsettia and the referenced plants, willow, rice, *Caladium* and *Pelargonium*. As such, the work aimed at willow, rice, *Caladium* and *Pelargonium*, as disclosed in the cited references would have provided absolutely no motivation to one of skill in the art with respect to the present invention. Therefore, one of skill in the art would not have found the Appellants' achievement in poinsettia obvious in light of results in such distantly related plants, alone or in any combination. In sum, the cited references by Barker et al., Sukhwinder, Loh et al. and Barcaccia et al. do not suggest application of AFLP analysis to poinsettia to one of ordinary skill in the art. None of these references teach or suggest that their findings could be applied broadly to other plants, much less to poinsettia in particular. Nor do they suggest that if tried, the ordinary person of skill in the art would have had a reasonable expectation of success.

III. Claims 1, 3, 5-7, 21, 23, 24, 63 and 69-74 are not obvious under 35 U.S.C. § 103(a) over Ling et al. (HortSci 32: 122-124 (1997)), in view of Loh et al. (Annals of Bot. 84:155-161 (1999)) as defined by Dice et al. (Ecology 26:297-302 (1945)).

The Final Office Action dated August 2, 2007 maintains the rejection of claims 1, 3, 5-7, 21, 23-24, 63 and 69-74 as allegedly unpatentable under 35 U.S.C. § 103(a) for obviousness over Ling et al. in view of Loh et al. (*Annals of Botany* 84:155-61, 1999) as further defined by Dice. Final Action, page 5. According to the Final Action, "Ling et al. teaches a method of distinguishing genetic relationship and diversity between Poinsettia cultivars, including breeding family 'Freedom'." Final Action, page 5. The Final Action further states that "Loh et al. teach a method using AFLP marker protocol to identify and study intra-and inter-specific variations in *Caladium bicolor* cultivars, an ornamental asexual plant," and that "Loh et al. teach using AFLP markers is useful in differentiating and characterizing cultivars within a *Caladium* species." Final Action, page 6-7. The Action concludes that it would have been "obvious to one of skill in the art at the time the invention was made to improve the method of identifying poinsettia cultivars by RAPD markers taught by Ling et al. to include the AFLP marker assay as taught by Loh et al." and that the "ordinary artisan would have had a reasonable expectation of success in using AFLP marker

assay taught by Loh et al. in the method taught by Ling et al. of Poinsettia cultivar genetic analysis because Loh et al. teach using AFLP marker to identify inter- and intra-cultivars in *C. bicolors*, an ornamental asexual plant, like that of Poinsettia cultivars....." Final Action, page 7. Applicants respectfully disagree.

The Ling et al. reference does not disclose or suggest a method of estimating a genetic relationship between poinsettia plants, a method of determining the profile similarity between a poinsettia plant and a known poinsettia cultivar, a method of assessing the breeding history of a poinsettia plant, a method of determining whether a poinsettia plant is a representative of a known poinsettia cultivar, or a method of distinguishing a poinsettia cultivar from a known poinsettia cultivar using AFLP analysis as recited by the present claims. As conceded by the outstanding rejection, Ling et al. concerns RAPD analysis. Further, Ling et al. uses RAPD analysis to compare the DNA of poinsettia cultivars from widely differing groups and as a result the RAPD markers used would not have to have been robust to distinguish these cultivars. (See Moyer Declaration, para. 4, submitted concurrently with the response dated May 23, 2005; hereinafter "the Moyer Declaration") (copy enclosed at Appendix B). Accordingly, Ling et al., alone or in any combination, does not render obvious the present invention utilizing AFLP analysis to distinguish among and between closely related poinsettia cultivars.

The outstanding rejection is based on the premise that Loh et al. provides the motivation for one of ordinary skill in the art to apply AFLP analysis to poinsettia because Loh et al. used this technique to evaluate *Caladium* cultivars. However, there is absolutely no suggestion in the cited Loh et al. publication that AFLP analysis could be applied to poinsettia or even a more general statement that AFLP analysis would be suitable for the study of ornamental plants other than *Caladium*. Loh et al. is solely concerned with *Caladium* and the applicability of AFLPs to *Caladium* cultivars. Further, *Caladium* is a monocot. It is entirely unrelated to the poinsettia, which is a dicot. As discussed above and in the Moyer Supplemental Declaration, para. 9, one of ordinary skill in the art would not have considered results in distantly related plants, such as *Caladium* is to poinsettia, to be applicable to one another.

Additionally, contrary to the assertion in the Final Action, *Caladium* is not an asexual ornamental plant but rather new cultivars of *Caladium* are developed by hybridization. See Loh et al., page 155, first paragraph. *Caladium* is asexually reproduced for the purpose of

propagation of the various cultivars for commercial sale, but sexual reproduction is used to develop new cultivars. *Id.* A hybrid is defined as "offspring of two parents that differ in one or more heritable characteristics; offspring of two different varieties or of two different species (*see* Raven et al., *Biology of Plants*, Worth Pub., N.Y., N.Y. (1992), page 747) (copy of page 747, submitted concurrently with the response dated May 12, 2006). Hybridization leads to much greater genetic diversity than does asexual reproduction and thus, as a result of hybridization, each new *Caladium* cultivar would be relatively genetically diverse as compared to any plant that is asexually reproduced, such as poinsettia.

The Final Action further states:

Loh et al. teach a method of identifying particular *C. bicolor* cultivars as well as identifying new cultivars (see abstract) and therefore not all of the plants assayed by Loh et al. were propagated by hybridization and the genetic diversity of *C. bicolor* is narrow, as taught by Loh et al. (see figure 4).

Final Action, page 19.

Appellants respectfully disagree with the interpretation of the Loh et al. abstract. The portion of the abstract that is referenced in the Final Action specifically states that "[t]he use of AFLP has potential for precisely characterizing and identifying particular caladium cultivars as well as for the registration of new cultivars." (Loh et al., Abstract, emphasis added). Clearly, this statement has nothing to do with how cultivars of *Caladium* are developed and cannot be construed to mean that the plants of Loh et al. were reproduced by any means other than hybridization as is stated in the text of the publication. *See* Loh et al., page 155, first paragraph. Nowhere does Loh et al. indicate that caladium cultivars are developed any way other than through hybridization.

Furthermore, nothing in Loh et al. states that the "genetic diversity of *C. bicolor* is narrow." Figure 4 of Loh et al. shows a UPGMA cluster analysis of AFLP data for the caladium cultivars. The data from Table 4 were used for the UPGMA cluster analysis. These data show the genetic diversity estimates to be about 0.2 for all cultivars. Nowhere in Loh et al. is this described as narrow. In fact, other researchers looking at genetic diversity estimates of other plant species have not necessarily considered such a number to reflect narrow genetic diversity. (e.g., Osman et al. *Plant Physiology* 131: 1294-1301 (2003))

In contrast to *Caladium*, genetic variation in poinsettia is achieved by selection of sports (defined as a sudden deviation from type: a mutation) or naturally occurring or induced

mutations (which are primarily radiation-induced mutations) rather than by breeding techniques such as hybridization. As a result, the genetic base of poinsettia is very narrow. One of ordinary skill in the art would not have concluded that the methods of Loh et al. with *Caladium* would have had a reasonable expectation of success if applied to an asexually reproduced and thus, much less genetically diverse plant, such as poinsettia.

Prior to the studies described in the present application, it would not have been at all obvious that AFLP fingerprinting analysis could be successfully applied to poinsettia (*see* Moyer Declaration, para. 5). As Dr. Moyer points out, although there were some reports of AFLP analysis in other ornamental plants, one of ordinary skill in the art would remain uncertain from these studies whether there would be sufficient inter-cultivar diversity among poinsettias to be detectable by AFLPs (*Id.* at para. 5).

This lack of an expectation of success is further emphasized by Dr. Moyer's research using microsatellite simple sequence repeat (SSR) analysis with poinsettia. This research and its outcome were reported in the Moyer Declaration (para. 8-13). Dr. Moyer found that SSR analysis failed to differentiate poinsettia cultivars. *Id.* at para. 12-14. SSR analysis should have worked as well or even better than AFLP analysis since SSR markers tend to have a higher level of heterozygosity and a generally greater level of somatic stability than AFLP markers. *Id.* at para. 13. SSR analysis has been shown to be applicable to a variety of plant species with success in determining genetic relationships. (*See* Pejic et al., *Theor. Appl. Genet.* 97:1248-1255 (1998) and Russell et al., *Theor. Appl. Genet.* 95:714-722 (1997); submitted concurrently with the response dated May 12, 2006). Thus, assuming, arguendo, as in the Final Action, and all previous Office Actions, that one of ordinary skill in the art would have had a reasonable expectation of success using AFLP analysis on poinsettia based on prior art using the AFLP method with other plant species, then it would also be assumed that one of ordinary skill in the art would have a reasonable expectation of success using SSR analysis in poinsettia. However, as shown in Dr. Moyer's data, the approach using SSR analysis failed in poinsettia. From his data, it appears that the narrow genetic base of poinsettia lacks polymorphisms in the SSR loci. (*see* Moyer Declaration, para. 13). Thus, with this result in mind, it would be clear to one of ordinary skill in the art that the use of such technologies as SSR, RFLP, RAPD, AFLP, etc. to distinguish between and among poinsettia cultivars would not have been obvious. Accordingly, success using such

technologies in poinsettia would be uncertain and that each would need to be tried out empirically.

In response to appellants' presentation of these data to the Examiner, the Final Action asserts that SSR analysis is not as sensitive a technique as AFLP (implying that it is not unexpected that SSR analysis would not work but one would still expect that AFLP analysis to be successful). Appellants disagree with this assertion. Any conclusion that one technique is more sensitive than another needs to be made on a species by species basis. In fact, Russell et al., in their report comparing the levels of genetic variation among barley accessions detected by RFLPs, AFLPs, SSRs and RAPDs, state "[I]ndeed, whenever SSRs have been compared to other systems, they have always revealed the highest levels of polymorphisms." (Russell et al., *Theor. Appl. Genet.* 95:714-722 (1997); page 719, first full sentence; copy enclosed herewith in the Evidence Appendix B; copy originally submitted concurrently with the response dated May 12, 2006). For this point they cite to the work of seven other research groups. Additionally, Pejic et al. found that among all of the methods tested, including SSR, RFLP, AFLP and RAPD, "the SSR data provided the highest level of discrimination between any pair of inbreds." Pejic et al., *Theor. Appl. Genet.* 97:1248-1255 (1998); page 1251, last full sentence; copy enclosed herewith in the Evidence Appendix B; copy originally submitted concurrently with the response dated May 12, 2006). Pejic et al. further state that "[T]he present data indicate on average SSRs carry two-fold more information than AFLPs and RAPDs." (Pejic et al., page 1251; second full paragraph). Therefore, Appellants respectfully submit that it is clearly incorrect to make the generalization that SSRs are less sensitive than AFLPs. Accordingly, in view of the foregoing, Appellants reassert that one of ordinary skill in the art could not have had any reasonable expectation of success prior to the present invention that sufficient polymorphisms detectable by AFLP would exist among poinsettia cultivars (Moyer Declaration, para. 6).

In further response to Appellants' arguments that it was uncertain whether there would be sufficient inter-cultivar diversity among poinsettias that would be detectable by AFLPs, the Final Action states that "several articles reveal AFLP analysis was capable of detecting very similar genomic variations at the time the application was filed." Final Action, page 19. The articles that the Final Action cites are publications in which AFLP analysis is performed on isolates of *Bacillus anthracis* and *Escherichia coli*, both bacteria.

One of ordinary skill in the art wishing to analyze genetic diversity within a population of complex multicellular eukaryotes such as plants would not consider publications applying AFLP analysis to bacteria to be at all relevant. These organisms are not in the same taxonomic kingdom; one group is prokaryotic and the other eukaryotic. The genetic complexity of plants as compared to bacteria is dramatically different, with plants being many times more complex. One of ordinary skill in the art would not look to AFLP analysis of bacteria for guidance in performing AFLP analysis in a plant. Nor would such publications provide one of ordinary skill in the art any reasonable expectation of success as to application of AFLP technology to plants, much less specifically to poinsettia. As discussed previously, even AFLP analysis using different plants has little relevance to whether the application of that technology to any particular plant would be successful. Publications regarding bacteria would have even less relevance. Furthermore, in contrast to the assertion in the Final Action, one of the cited bacterial references, Arnold et al., states that the population of bacterial strains studied was "a genetically diverse group" (Arnold et al., page 1274, last sentence to page 1275, first sentence). The other reference, Keim et al., states that "the advantage of this system was the ability to screen a large number of potentially diverse strains across a relatively large percentage of the *B. anthracis* genome." (Keim et al., page 216, para. 1). Thus, it is not clear that these references even stand for the proposition made in the Final Action, that AFLP analysis was capable of detecting very similar genomic variations at the time the application was filed. Therefore, in view of the foregoing, Appellants assert that one of ordinary skill in the art could not have had any reasonable expectation of success prior to the present invention that sufficient polymorphisms detectable by AFLP would exist among poinsettia cultivars.

The Court of Appeals for the Federal Circuit has held that "[b]oth the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chemical*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Furthermore, what is required under 35 U.S.C. § 103 is an "as a whole" assessment of the invention which further requires a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner. *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1275 (Fed. Cir. 2004), see also *Princeton Biochemicals, Inc., v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed Cir. 2005). These

criteria are not satisfied by the outstanding obviousness rejection. Simply identifying all of the elements in a claim in the prior art does not render a claim obvious. *Ruiz v A.B. Chance Co.*, 357 F.3d at 1275.

At most, the combination of the Ling et al., Loh et al. and Dice would have made it obvious to try to apply AFLPs to poinsettia cultivars. However, "obvious to try" is not the legal standard for obviousness under section 103. In the absence of any suggestion or demonstration whatsoever in any of the cited references that AFLP analysis would be appropriate for the study of poinsettias and given the lack of any close relationship between poinsettia and the plants studied in the cited references, there could have been no reasonable expectation of success with respect to the present invention. Thus, the teachings of Ling et al. in view of Loh et al. as defined by Dice would have provided neither the motivation to combine nor a reasonable expectation of success to one of ordinary skill in the art with respect to the present invention, both of which are legally required to maintain the outstanding rejection.

In view of the foregoing, Applicants respectfully submit that the claimed subject matter is nonobvious over Ling et al. in view of Loh et al. as defined by Dice, and respectfully request that the outstanding rejection under §103(a) be withdrawn.

IV. Claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69-74 are not obvious under 35 U.S.C. § 103(a) over Ling et al., in view of Barcaccia et al. (J. Horticultural Science and Biotechnology 74:243-50, (1999)) as defined by Dice et al.

The Final Action dated August 2, 2006 has maintained the rejection of claims 1, 3, 5-7, 21, 23-24, 30, 63 and 69-74 as allegedly unpatentable under 35 U.S.C. § 103(a) over Ling et al. in view of Barcaccia et al., as defined by Dice. The Ling et al. reference has been addressed above and in the prior response and in the Moyer Declaration. The deficiencies of Ling et al. are not remedied by the teachings in Barcaccia et al. concerning *Pelargonium* or the analytical methods of Dice. The AFLP work in *Pelargonium* reported by Barcaccia et al. is not relevant to poinsettias, and would not have provided the motivation or reasonable expectation of success with respect to the claimed invention that are legally required to maintain the present rejection.

As a preliminary matter, as discussed above and in Dr. Moyer's Supplemental Declaration (para. 8), *Pelargonium* or geranium is taxonomically unrelated to poinsettia. They are in entirely different taxonomic orders, with poinsettia being in the *Euphorbiales* and

geranium being in the *Geraniales*. *Id.* In the Order *Euphorbiales*, alone, the diversity of the plants represented is enormous much less when one starts comparing plants inside the *Euphorbiales* order to those outside, such as the *Geraniales*. *Id.* One of ordinary skill in the art would have recognized the enormous differences between geranium and poinsettia and would not have found the application of AFLP analysis to geranium to teach, suggest or motivate one to apply AFLP analysis to the poinsettia. *Id.* at para. 8-9. Further, even if tried, the work with AFLPs and geranium would have failed to provide to one of ordinary skill in the art a reasonable expectation of success in its application to poinsettia, due to the recognition of the very distant relationship between the two species. *Id.*

Additionally, it should be noted that the data in Barcaccia et al. was generated using a very small number (ten) of geranium plants of entirely unknown genetic origin. The only information available about these plants is phenotypic, which appears to divide nine of the plants into two populations; the very same populations that the AFLP analysis detects. The tenth plant was a decayed flower from which no certain phenotypic data could be gotten and this fell into a third AFLP grouping. Barcaccia et al. presents no evidence that any of these plants represented different cultivar populations at all. There is simply no information as to the genetic similarity or dissimilarity of the plants used. Without any information on the genetic background of the plants used for the analysis, one of ordinary skill in the art would not have concluded based on Barcaccia et al. that AFLP analysis was successful in distinguishing even geranium cultivars, much less that the same technique could be applied successfully to distinguish between and among poinsettia cultivars. At most, one could say that this group of ten geraniums fell into three apparent groupings but since nothing is known about the plants nothing can be said regarding the ability of the technique to distinguish geranium cultivars.

In response to this argument the Final Action states:

The response has been thoroughly reviewed but not found persuasive. It is noted that the claims are drawn to a method of estimating a genetic relationship and the claims do not require that genetic origin of the plant be known.

Final Action, page 23.

Appellants respectfully submit that this is incorrect. In fact, independent claims 1, 3, 63, 69-71, 73 and 74 recite that the plant to which the poinsettia plant is being compared be either "known" or be "a representative member of a specific breeding family" (which would require that the representative member's breeding be known). In order to be able to make any

statement regarding the ability of a particular technique to estimate a genetic relationship, to assess the breeding history, to determine whether one particular plant is a representative of a known cultivar or to distinguish between one cultivar from another known cultivar, it is necessary to have information regarding the genetic origin of the reference plant(s).

Accordingly, because Barcaccia et al. utilizes only geranium plants of entirely unknown genetic origin, one of ordinary skill in the art would not have concluded, based on Barcaccia et al., that AFLP analysis was successful in distinguishing even geranium cultivars, much less that the same technique could be applied successfully to distinguish between and among poinsettia cultivars.

The Final Action states that Barcaccia et al. was not cited for its relationship to poinsettia. However, Appellants contend that the outstanding rejection draws a direct connection between work in geranium and the present invention in poinsettia. Final Action, page 22. This rejection is based on the premise that there would have been motivation to combine work done in geranium (Barcaccia et al.) with work done in poinsettia (Ling et al.), and, further, that the use of AFLP analysis in geranium would render obvious the use of AFLP analysis in poinsettia (this is the same premise upon which every obviousness rejection in the present case is based). Appellants' arguments regarding the distinctness of geranium and poinsettia are directed to the legally deficient foundation of the outstanding rejection; because there is no genetic relationship between geranium and poinsettia, (1) there would be no motivation to combine the cited references, and (2) even if the references were so combined there would not have been any reasonable expectation of success with respect to the present invention. Accordingly, the outstanding rejection over Ling et al. in view of Barcaccia et al. and Dice is legally insufficient to establish a *prima facie* case of obviousness and should be withdrawn.

Finally, the Final Action states:

The response asserts that Barcaccia did not evaluate the breeding history of the plant because breeding history refers to methods that provide information regarding the pedigree of the plant. This response has been reviewed but is not found persuasive as the claims do not require the pedigree of the plant. Furthermore, Barcaccia et al. teach using AFLP markers to identify the genetic relationship (identity vs. diversity) (breeding history) between a found flower and another plant (see page 244, 1st column, 2nd full paragraph). Therefore, Barcaccia et al. teach using AFLP markers to identify the breeding history of a plant (the found flower to a known plant). Therefore, Barcaccia et al. teach using AFLP markers to evaluate the breeding history of an asexual plant.

Final Action, pages 26-25.

Appellants reiterate that forensic work of Barcaccia et al. in comparing a found geranium flower of unknown origin with another geranium plant of unknown origin did not "evaluate the breeding history" of the plant as recited in claim 3 of the present application. Evaluation of the breeding history as used in the present invention refers to methods that provide information regarding the pedigree of the plant, for example, whether a plant is "essentially derived" from another plant or whether the reference plant was otherwise part of the pedigree of the new plant. One of the unexpected discoveries of the present inventors was that the presently claimed invention can be used to evaluate breeding history. None of the cited references, including Barcaccia et al., give any inkling whatsoever that AFLP analysis, or any other genetic analysis technique, can be used to evaluate breeding history in any plant, much less poinsettia as presently claimed. The plants used in the Barcaccia et al. study are of unknown genetic origin. Thus, the breeding history of these plants was not known and the breeding history of the unknown flower could not have been determined from these unknown plants. As a result, one of ordinary skill in the art would not consider Barcaccia et al., or any of the other cited references, as providing any teaching or suggestion that AFLP analysis, or any other genetic analysis technique, could be used to evaluate breeding history in any plant, much less poinsettia as presently claimed, wherein a plant is compared to another plant that is a representative member of a specific breeding family and is therefore known.

For the reasons set forth above, it is respectfully submitted that claims 1, 3, 5-7, 21, 23-24, 30, 63 and 69-74 are patentable over Ling et al. in view of Barcaccia et al. as defined by Dice and appellants respectfully request that this rejection be withdrawn.

V. Claims 1, 3, 5-7, 21, 23, 24, 30, 63 and 69 are not obvious under 35 U.S.C. § 103(a) over Ling et al., in view of Sukhwinder et al. (*Crop Improvement* 25:15-20 (1998)) as defined by Dice et al.

The Final Action dated August 2, 2006 has maintained the rejection of claims 1, 3, 5-7, 21, 23-24, 30, 63 and 69-74 as allegedly unpatentable under 35 U.S.C. § 103(a) over Ling et al. in view of Sukhwinder et al. as defined by Dice. The Ling et al. reference has been addressed in detail above and in the Moyer Declaration. The deficiencies of Ling et al. are not remedied by the teachings in Sukhwinder et al., which concerns rice, or by the analytical methods of Dice. The AFLP work in rice reported by Sukhwinder et al. is not relevant to poinsettias and would not have provided the motivation to combine or any reasonable expectation of success with respect to the claimed invention that are legally sufficient to

maintain the present rejection. As discussed above and in the Moyer Supplemental Declaration, para. 5, rice is entirely unrelated taxonomically to poinsettia. They are not even in the same taxonomic class, as rice is a monocot and poinsettia is a dicot. (Supplemental Moyer Declaration, para. 4) One of ordinary skill in the art would not consider results in such distantly related plants, such as rice is to poinsettia, to be applicable to one another. *Id.* at para. 9.

Additionally, in view of the unpredictability of genetic fingerprinting in poinsettia (discussed previously in detail above on page 11, second full paragraph through page 12, first sentence, and in the Moyer Declaration, para. 15), the use of AFLPs in poinsettias would not have been at all obvious to one of ordinary skill in the art based on Ling in view of Sukhwinder's work and further in view of the methods of Dice prior to the present invention.

In light of the discussion above, it is respectfully requested that the obviousness rejection over Ling et al. in view of Sukhwinder et al. as defined by Dice be withdrawn.

VI. Claims 1, 3, 5, 6, 21, 23, 30, 63 and 69-74 are not obvious under 35 U.S.C. § 103(a) over Ling et al., in view of Barker et al. (*Genome* 42:173-183 (1999)) as defined by Tulloss (Offprint from Palm and Chapel, eds., (1997)).

The Final Action has also maintained the rejection of claims 1, 3, 5, 6, 21, 23, 30, 63 and 69-74 as allegedly unpatentable under §103(a) over Ling et al. in view of Barker et al. as defined by Tulloss. The Ling et al. reference has been addressed in the preceding sections of this Appeal Brief and in the Moyer Declaration. The discussions in Barker et al. regarding willow and/or the analytical methods of Tulloss et al. do not remedy the deficiencies of the Ling et al. reference. Again, the AFLP work in willow reported by Barker et al. is not relevant to poinsettias and would not provide the requisite motivation or any reasonable expectation of success with respect to the present invention. Willow trees are unrelated taxonomically to poinsettia. (Moyer Supplemental Declaration, para. 7). They are in entirely different taxonomic subclasses, with willow in the *Dilleniidae* subclass and poinsettia in the *Rosidae* subclass. *Id.* at para. 7-8. One of ordinary skill in the art would not consider results in such distantly related plants, such as willow tree is to a poinsettia plant, to be applicable to one another. *Id.* at para. 9.

Additionally, in view of the unpredictability of genetic fingerprinting in poinsettia (discussed in detail above on page 11, second full paragraph, through page 12, first sentence, and in the Moyer Declaration, para. 15), the use of AFLPs in poinsettias could not have been

at all obvious to one of ordinary skill in the art based on Ling in view of Barker's work and further in view of the methods of Tulloss prior to the present invention.

Accordingly, it is submitted that the present invention is patentable over Ling et al. in view of Barker et al. as defined by Tulloss, and request that the outstanding rejection under §103(a) on this basis be withdrawn.

VIII. Conclusion

In light of the entire record and the above discussion, Applicants respectfully submit that claims 1, 3, 5-7, 21, 23-24, 30, 63 and 69 are patentable over Ling et al. in view of Loh et al., Barcaccia et al., Sukhwinder et al or Barker et al. as defined by Dice or Tulloss. Accordingly, Applicants respectfully request reversal of the pending rejection of claims 1, 3, 5-7, 21, 23-24, 30, 63 and 69 and that this case be passed to issuance.

Respectfully Submitted,



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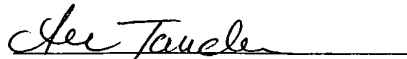

Amelia Tauchen

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APPENDIX A

What is claimed is:

1. (Previously presented) A method of estimating a genetic relationship between a poinsettia plant and a known poinsettia cultivar, the method comprising the steps of:
 - (a) obtaining a DNA fingerprint of the poinsettia plant's genomic DNA by AFLP, the fingerprint comprising a collection of amplified polymorphic restriction fragments;
 - (b) comparing the fingerprint obtained in (a) with a genomic DNA fingerprint of the known poinsettia cultivar; and
 - (c) estimating the genetic relationship between the plant and the cultivar by determining the degree of similarity between the fingerprints.
2. (Previously presented) The method of Claim 1, wherein the amplified polymorphic restriction fragments comprise DNA sequences that include DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37.**
3. (Previously presented) A method of assessing the breeding history of a first poinsettia plant, comprising:
 - (a) obtaining a DNA fingerprint of the genomic DNA of a first poinsettia plant by AFLP, wherein the fingerprint comprises a set of amplified polymorphic restriction fragments;
 - (b) comparing the fingerprint of the first poinsettia plant with a fingerprint of the genomic DNA of a poinsettia plant that is a representative member of a specific breeding family, wherein the fingerprint comprises a set of amplified polymorphic restriction fragments; and
 - (c) generating a profile index value based on the comparison of the fingerprint of the first poinsettia plant with the fingerprint of the poinsettia plant that is a representative member of a specific breeding family, thereby assessing the breeding history of a poinsettia plant.

4. (Previously presented) The method of Claim 3, wherein the amplified polymorphic restriction fragments comprise DNA sequences that include DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37.**

5. (Previously presented) The method of Claim 3, wherein the specific breeding family is selected from the group consisting of the Freedom, Peterstar, and Sonora breeding family.

6. (Original) The method according to Claim 3, wherein the AFLP analysis is carried out by first digesting the genomic DNA with a restriction enzyme that has a tetranucleotide recognition site and a restriction enzyme that has a hexanucleotide recognition site.

7. (Original) The method according to Claim 6, wherein the restriction enzyme that has a tetranucleotide recognition site is *MseI*, and the restriction enzyme that has a hexanucleotide recognition site is *EcoRI*.

8-9 (Canceled).

10. (Previously presented) The method of Claim 3, wherein the fingerprint of the genomic DNA of the first poinsettia plant is used to generate a profile of the poinsettia plant, wherein the profile comprises the set of amplified polymorphic restriction fragments that comprise DNA sequences that include the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37**; and wherein (b) comprises comparing the profile of the poinsettia plant to a profile generated from the fingerprint of the poinsettia plant that is a representative member of a specific breeding family, wherein the profile of the poinsettia plant that is a representative member of a specific breeding family comprises the set of amplified polymorphic restriction fragments that comprise DNA sequences that include the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35 and 37.**

11. (Previously presented) The method of Claim 10, wherein the profile of at least one of the first poinsettia plant and the profile of the poinsettia plant that is a representative

member of a specific breeding family is stored in a database comprising profiles of known poinsettia cultivars, and wherein the profiles of the known poinsettia cultivars comprise the set of amplified polymorphic restriction fragments that comprise DNA sequences that include the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37.**

12-20 (Canceled).

21. (Previously presented) A method of determining the profile similarity of a first poinsettia plant to a second poinsettia plant, comprising:

(a) obtaining a DNA fingerprint of the genomic DNA of a first poinsettia plant by AFLP, wherein the fingerprint comprises a set of amplified polymorphic restriction fragments;

(b) comparing the fingerprint of the first poinsettia plant with a fingerprint of the genomic DNA of the second poinsettia plant, wherein the fingerprint comprises a set of amplified polymorphic restriction fragments; and

(c) generating a profile index value based on the comparison of the fingerprint of the first poinsettia plant with the fingerprint of the second poinsettia plant, thereby estimating the profile similarity of the first poinsettia plant to the second poinsettia plant.

22. (Previously presented) The method according to Claim 21, wherein the amplified polymorphic restriction fragments comprise DNA sequences that include DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37.**

23. (Original) The method according to Claim 21, wherein the AFLP analysis is carried out by first digesting the genomic DNA with a restriction enzyme that has a tetranucleotide recognition site and a restriction enzyme that has a hexanucleotide recognition site.

24. (Original) The method according to Claim 23, wherein the restriction enzyme that has a tetranucleotide recognition site is *MseI*, and the restriction enzyme that has a hexanucleotide recognition site is *EcoRI*.

25-26 (Canceled).

27. (Previously presented) The method of Claim 21, wherein the fingerprint of the genomic DNA of the first poinsettia plant is used to generate a profile of the poinsettia plant, wherein the profile comprises the set of amplified polymorphic restriction fragments that comprise DNA sequences that include the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37**; and wherein (b) comprises comparing the profile of the poinsettia plant to a profile generated from the fingerprint of the second poinsettia plant, wherein the profile of the second poinsettia plant comprises the set of amplified polymorphic restriction fragments that comprise DNA sequences that include the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37**.

28. (Previously presented) The method of Claim 27, wherein the profile of at least one of the first and the second poinsettia plants is stored in a database comprising profiles of known poinsettia cultivars, and wherein the profiles of the known poinsettia cultivars comprise the set of amplified polymorphic restriction fragments that comprise the DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37**.

29. (Original) The method according to Claim 28, wherein the database is stored in a computer-readable storage medium.

30. (Original) The method according to Claim 21, wherein the comparing step is carried out by a computer.

31-51 (Canceled).

52. (Previously presented) The method of claim 64, wherein the comparison between the profile of the poinsettia plant and the known poinsettia cultivar is carried out by a computer.

53-62 (Canceled).

63. (Previously amended) A method of determining whether a poinsettia plant is a representative of a known poinsettia cultivar, comprising:

- (a) obtaining a DNA fingerprint of the genomic DNA of a poinsettia plant by AFLP analysis; and
- (b) comparing the fingerprint of (a) with a fingerprint of the genomic DNA of the known poinsettia cultivar;

wherein the poinsettia plant is a representative of the known poinsettia cultivar if the fingerprint of the poinsettia plant and the fingerprint of the known poinsettia cultivar have the same complement of polymorphic bands.

64. (Previously presented) The method according to Claim 63, wherein the DNA fingerprint of the genomic DNA is a set of amplified polymorphic restriction fragments, and wherein the amplified polymorphic restriction fragments comprise DNA sequences that include DNA sequences **SEQ ID NOS: 12, 20, 21, 22, 23, 24, 34, 35, and 37.**

65-68 (Canceled).

69. (Previously presented) A method of distinguishing a poinsettia cultivar from a known poinsettia cultivar, comprising:

obtaining a DNA fingerprint of the genomic DNA of a poinsettia plant by AFLP analysis and;

comparing the fingerprint of (a) with a fingerprint of the genomic DNA of the known poinsettia cultivar;

wherein the poinsettia plant is not a representative of the known poinsettia cultivar if the fingerprint of the poinsettia plant and the fingerprint of the known poinsettia cultivar are not essentially the same.

70. (Canceled).

71. (Canceled).

72. (Canceled).

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73. (Canceled).

74. (Canceled).

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APPENDIX B – EVIDENCE APPENDIX

Evidence listing:

- 1) Document entitled "APPENDIX A. Taxonomic relationships between poinsettia and the plant species in the cited references." This document was submitted concurrently with the response dated May 12, 2006.
- 2) Document entitled "Moyer Supplemental Declaration". This document was submitted concurrently with the response dated May 12, 2006 as a 1.132 declaration by Dr. James Moyer.
- 3) Document entitled "Moyer Declaration." This document was submitted concurrently with the response dated May 23, 2005 as a 1.132 declaration by Dr. James Moyer.
- 4) Document entitled "Appendix I." This document was submitted concurrently with the 1.132 declaration by Dr. James Moyer (entitled "Moyer Declaration") and the response dated May 23, 2005
- 5) Raven et al., *Biology of Plants* Worth Pub., N.Y., N.Y. (1992), page 747. A copy of page 747 was submitted concurrently with the response dated May 12, 2006.
- 6) Pejic et al., *Theor. Appl. Genet.* 97:1248-1255 (1998). A copy of Pejic et al. was submitted concurrently with the response dated May 12, 2006
- 7) Russell et al., *Theor. Appl. Genet.* 95:714-722 (1997). A copy of Russell et al. was submitted concurrently with the response dated May 12, 2006.

APPENDIX A. Taxonomic relationships between poinsettia and the plant species in the cited references.

Kingdom: *Planta*

Subkingdom: *Tracheobionta* – vascular plants

Superdivision: *Spermatophyta* – seed plants

Division: *Magnoliophyta* – flowering plants

Class: *Magnoliopsida* – dicotyledons

Subclass: *Dilleniidae*

Order: *Salicales*

Family: *Salicaceae*

Genus: *Salix* – Willow

Subclass: *Rosidae*

Order: *Geraniales*

Family: *Geraniaceae*

Genus: *Pelargonium* – Geranium

Order: *Euphorbiales*

Family: *Euphorbiaceae*

Genus: *Euphorbia* – Poinsettia

Class: *Liliopsida* – monocotyledons

Subclass: *Arecidae*

Order: *Arales*

Family: *Araceae*

Genus: *Caladium*

Subclass: *Commelinidae*

Order: *Cyperales*

Family: *Poaceae*

Genus: *Oryza* – Rice



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Moyer et al.

Serial No.: 09/912,072

Filed: July 24, 2001

For: IDENTIFICATION OF POINSETTIA CULTIVARS

Examiner: S. Bausch

Group Art Unit: 1634

Supplemental Declaration of Dr. James W. Moyer under 37 C.F.R. § 1.132

I, James W. Moyer, do hereby declare and state as follows:

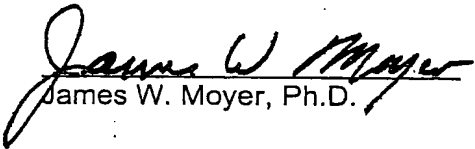
1. My credentials were presented in a previous declaration submitted May 23, 2005.
2. I am a named inventor on U.S. Patent Application No. 09/912,072 (*hereinafter* "the '072 application").
3. At the time the work in the '072 application was carried out, AFLP technology had not been used to measure genetic diversity in poinsettia or in any species closely related to poinsettia. The application of AFLP technology to any particular plant species is considered uncertain and in light of this, to assess the relevance of the Loh et al., Barcaccia et al., Sukhwinder et al. and Barker et al. publications to poinsettia, it is further relevant to consider how distantly related poinsettia is to rice, willow, *Pelargonium* and *Caladium*. The taxonomic relationship of poinsettia as compared with these plants is shown in Appendix A.
4. All of the plants at issue are in the Division *Magnoliophyta*, the division to which all flowering plants belong. Two of the plants referenced, rice and caladium, are further classified as monocots (Class *Liliopsida*), while three, pointsettia, willow and geranium, are dicots (Class *Magnoliopsida*).
5. Rice is further classified into the Subclass *Commelinidae*, Family *Poaceae*, and Genus *Oryza*. The *Commelinidae* contains an enormous diversity of plants including rushes and sedges, cereals, pineapples, ginger, and arrowroot. Therefore, it is nearly impossible to generalize findings with regard to one member of the *Commelinidae* such as a grass (e.g., maize or rice) to another member such as a bromeliad (e.g., a pineapple).
6. Caladiums are in the Subclass *Aracidae*. The *Aracidae* includes the palms, duckweed and caladium. *Caladium* is further classified into the Family *Araceae* (aroid), and Genus *Caladium*. The aroid group includes edible plants as well as those that are poisonous and includes philodendron, calla lily, Mexican breadfruit and taro. Thus, there is an enormous diversity of plants in the Subclass *Aracidae* and it would be difficult to generalize regarding one member such as duckweed with another member such as palm or philodendron.
7. Within the class *Magnoliopsida*, or the dicots, willow (*Salix*) is further classified into the Subclass *Dilleniidae*. The *Dilleniidae* is once again a very diverse grouping including, for example, the mustard family (e.g., broccoli), the heath family (e.g., rhododendron and blueberry) and the cucurbit family (e.g., cucumber, squash).

Willow is further classified into the Family *Salicaceae* and the genus *Salix*. Once again, it would be very difficult to generalize findings about a member of this diverse Subclass, such as willow or broccoli, to another member such as blueberry or squash.

8. Both *Pelargonium* and poinsettia are in the Subclass *Rosidae*. This is an incredibly diverse group of plants with 108 families and 58,000 species. Some examples of plant families that fall within the *Rosidae* include the carrot family, the apple family, the legume family (e.g., pea), and the dogwood family. In addition, the *Rosidae* subclass also includes the geranium family to which *Pelargonium* belongs and the very large and diverse euphorbia or spurge family (approximately 300 genera and 7,500 species) to which poinsettia belongs. (Park et al., *Int J. Plant Sci.* 161:425-434 (2000); C.L. Porter, *Taxonomy of Flowering Plants*, W.H. Freeman & Co., 472 pp., p.338, (1967)). *Pelargonium* is further classified into the Genus and Species *Pelargonium peltatum*. Poinsettia is in the Genus *Euphorbia*, which has been described as one of the largest and most complex genera of flowering plants with about 1600 species. *Id.* Clearly, it is nearly impossible to generalize findings about one member in the Subclass *Rosidae*, such as carrot to another member such as dogwood. This would be difficult even within the single Genus *Euphorbia*, of which poinsettia is a member, due to its great size and diversity.

9. Plant scientists interested in determining genetic relationships between and within plant cultivars, varieties or species would be well-aware of the distant relationship between poinsettia and the plants studied in the cited publications, and would not find our achievement in poinsettia obvious in light of results in a tree such as willow, a cereal plant such as rice, an aroid plant such as caladium, or even geranium. It is simply not the case that AFLP analysis in any other plant, particularly distantly related plants such as those in the cited publications, would suggest application of AFLP analysis in poinsettia. A scientist in this field would at most think to try such a technique but would enter into the research without any expectation of success. This would be particularly true in the case of poinsettia since it is known to have a very narrow genetic base (See, prior Moyer Declaration submitted May 23, 2005).

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


James W. Moyer, Ph.D.

1/25/06
Date

Attachment: Appendix A

APPENDIX A. Taxonomic relationships between poinsettia and the plant species in the cited references.

Kingdom: *Plantae*

Subkingdom: *Tracheobionta* – vascular plants

Superdivision: *Spermatophyta* – seed plants

Division: *Magnoliophyta* – flowering plants

Class: *Magnoliopsida* – dicotyledons

Subclass: *Dilleniidae*

Order: *Salicales*

Family: *Salicaceae*

Genus: *Salix* – Willow

Subclass: *Rosidae*

Order: *Geraniales*

Family: *Geraniaceae*

Genus: *Pelargonium* – Geranium

Order: *Euphorbiales*

Family: *Euphorbiaceae*

Genus: *Euphorbia* – Poinsettia

Class: *Liliopsida* – monocotyledons

Subclass: *Arecidae*

Order: *Arales*

Family: *Araceae*

Genus: *Caladium*

Subclass: *Commelinidae*

Order: *Cyperales*

Family: *Poaceae*

Genus: *Oryza* – Rice



Attorney's Docket No. 5051-445

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Moyer et al.

Serial No.: 09/912,072

Filed: July 24, 2001

For: IDENTIFICATION OF POINSETTIA CULTIVARS

Examiner: M. Sheinberg

Group Art Unit: 1634

Declaration of Dr. James W. Moyer under 37 C.F.R. § 1.132

I, James W. Moyer, do hereby declare and state as follows:

1. I am a Professor of Plant Pathology and Head of the Department of Plant Pathology at North Carolina State University. I received my undergraduate degree in Agronomy at Washington State University. I did my masters and doctoral work in plant pathology at The Pennsylvania State University. One of the research areas on my laboratory is a floral crop program that has focused on techniques for development of reliable fingerprinting technology as an aid to cultivar identification and more recently the development of tools for molecular marker assisted breeding.

2. I am a named inventor on U.S. Patent Application No. 09/912,072 (*hereinafter* "the '072 application").

3. I have read the following publications cited by the Examiner in connection with the '072 application:

- Ling et al., *HortScience* 32:122-124 (1997)
- Barcaccia et al., *J. Horticultural Science & Biotechnology* 74:243-250 (1999)
- Singh et al., *Crop Improv.* 25:15-20 (1998) (*referred to as "Sukhwinder et al."*)
- Barker et al., *Genome* 42:173-182 (1999)

4. Ling et al. concerns the use of RAPD techniques to compare the DNA of nine commercial poinsettia cultivars, which were from widely differing groups. Thus, the RAPD analysis of Ling et al. did not have to be robust to distinguish these cultivars. Singh et al., Barker et al., and Barcaccia et al. applied AFLPs to compare the fingerprints of cultivars from rice, willow and *Pelargonium* (geranium), respectively.

5. Prior to the work described in the '072 application, it would not have been obvious from Ling et al. that AFLP analysis of poinsettias could distinguish and estimate genetic relationships among different cultivars. AFLP analysis had been used in other plants, primarily crop plants such as rice and willow as described in the Singh et al. and Barker et al. publications. Some recent work with AFLPs had been reported in ornamental plants including *Pelargonium* as described by Barcaccia et al.

However, it simply was not known whether AFLP analysis would be able to detect sufficient inter-cultivar polymorphisms among poinsettia cultivars. Barcaccia et al.'s work with geranium would not have been predictive with respect to poinsettia, because the gene pools of these plants are distinct.

6. Poinsettia is an asexually reproducing species, with a narrow genetic base. Most poinsettia cultivars have been identified by selection of sports or induced mutations. As a result, there is very little pedigree information available for poinsettia. Prior to the invention described in the '072 application, it was uncertain whether there would be sufficient genetic polymorphisms detectable by AFLP among poinsettia cultivars.

7. Further, it was not at all obvious in advance that the polymorphisms and genetic fingerprints would be powerful enough to track the breeding history or pedigree of a broad range of poinsettia cultivars and that the different breeding families would have distinct and closely related fingerprints. One of the exciting discoveries that came out of the work described in the '072 application was the finding that differences in the AFLP fingerprints were reflective of breeding lineage. While there is speculation in the literature about relationships, none of the cited publications (Ling et al., Singh et al., Barker et al., Barcaccia et al.) demonstrate this relationship between polymorphism and breeding history.

8. The unpredictability in fingerprinting methods as applied to poinsettia is also evident in our work with microsatellites. We have tried to evaluate genetic relationships among poinsettia cultivars using microsatellite simple sequence repeat (SSR) analysis. Microsatellites are sections of DNA composed of repeats of short motifs (e.g., CA, GTG, TGCT, etc.) arranged in tandem. The sequence surrounding the repeat region is usually conserved, allowing amplification primers to be designed so that the repeat region and a short flanking sequence can be amplified. Polymorphisms are observed in the number of repeats present.

9. Approximately 700,000 bases of poinsettia sequence were obtained from a genomic library constructed of partially digested 'Freedom Pink' DNA. Using a computer algorithm, the sequence was scanned for the presence of SSR motifs of significant size to be polymorphic based on previous studies (Cardle et al., *Genetics* 847-854 (2000); Alvarez et al., *Theor. Appl. Genet.* 103:1283-1292 (2001)). The minimum number of repeats selected were 6 for dinucleotide motifs, 5 for trinucleotide motifs, 4 for tetranucleotide motifs, and 4 for pentanucleotide motifs. As far as I am aware, no other studies have reported sextanucleotide motifs; the minimum number of repeats for this motif was set at 3. A total of 20 SSR motifs were isolated. They consisted of: 11 dinucleotide, 6 trinucleotide, 1 tetranucleotide, 1 pentanucleotide, and 1 sextanucleotide. Primers were designed for 18 of the 20 SSRs; two of the motifs were near the end of the cloned insert such that there was not sufficient flanking region in which to design a primer.

10. The plant material selected for evaluation consisted of 48 cultivars of poinsettia representing 12 of the major cultivar groups of color sports, as well as 4

other cultivars. These groups included Angelika, Annette Hegg, Celebrate, Cortez, Freedom, Gross, Lilo, Nutcracker, Pepride, Peterstar, Sonora, and V14 Glory. The 4 additional cultivars selected were 'Winter Rose', 'Pearl', 'Prestige', and 'Snowcap'. Duplicate samples of 2 cultivars taken from different plants were used as controls.

11. Twelve of the primer pairs amplified a fragment of the predicted size, whereas the rest could not be optimized and either did not amplify or resulted in too complex a pattern to evaluate. The primer pairs amplified from 1-5 alleles each, with an average of 2 alleles. Three primer pairs amplified one allele. Six of the loci were polymorphic, with 2 to 4 alleles. Duplicate cultivars consistently amplified the same number of alleles.

12. Statistical analysis of the data revealed a narrow range of distances and low resolution of cultivars and cultivar groups on a dendrogram (Appendix 1; attached). Shared allele distances ranged from 0-0.25. The largest distance, 0.25 was between the: Hegg group and V14 Glory Red; V14 Glory Pink/V14 Glory White and Pepride Red, Winter Rose, and the Cortez group; Winter Rose and the Lilo group; and the Sonora group and the Lilo group. Many cultivar comparisons had a distance of 0 and could not be differentiated, as seen in the attached dendrogram. Some cultivar groups could be differentiated from each other and formed unique clusters on the dendrogram; Hegg, Cortez, Sonora, and Lilo cultivar groups formed unique clusters with a distance of 0. Other cultivar groups were divided or clustered with unrelated groups. The pink and white cultivars of the Celebrate 2 and V14 Glory groups each formed unique clusters separate from the Red "parent" cultivars of these groups. The white cultivars Angelika White, Snowcap, Nutcracker White, and Pearl clustered together with a distance of 0. Finally, a large cluster with a 0 distance was made up of the Freedom, Peterstar, and Gross groups as well as the Angelika and Nutcracker groups minus the white cultivars.

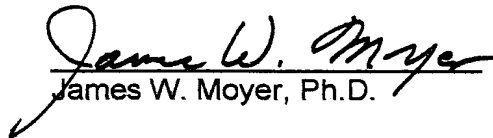
13. As the results described above demonstrate, the power of microsatellite techniques to differentiate cultivars was not evident in poinsettia, likely due to the narrow genetic base of this crop resulting from the methodologies used in poinsettia breeding programs, which rely heavily on mutation breeding and selection of sports. This finding is unexpected; based on the known properties of microsatellites, I would have expected this approach to have worked as well, or even better, than AFLPs in distinguishing poinsettia cultivars (see, e.g., Margante et al., *Plant J.* 3:175-182 (1993); Maguire et al., *TAG* 104:388-398 (2002). It is known that SSR markers tend to have a higher level of heterozygosity than AFLP markers due to codominance of SSR loci. In addition, SSR markers generally have greater somatic stability than AFLP markers. Finally, SSR techniques are typically found to be more technically reproducible than AFLP. However, from our data, it appears that the narrow genetic base of poinsettia lacks polymorphisms in the SSR loci.

14. RAPD, AFLP and SSR markers are each distinct. RAPD markers detect polymorphisms based on hybridization of short primers to random locations in the genome, whereas AFLP markers detect polymorphic restriction sites in the genome or at least polymorphisms in close proximity to restriction sites.

Microsatellites detect polymorphisms in the number of short tandem motif repeats that are present in the genome. RAPD, AFLP and SSR would therefore each detect a different subset of polymorphisms. The microsatellite data discussed above demonstrates that for poinsettia you must detect the "right" polymorphisms in order to distinguish among poinsettia cultivars.

15. The narrow genetic base of poinsettia and the failure of microsatellite analysis to distinguish poinsettia cultivars indicate that there is unpredictability in the application of fingerprinting techniques to poinsettia, with each approach needing to be evaluated on a case-by-case basis. It therefore would not have been obvious prior to the experimentation described in the '072 application that sufficient AFLP polymorphisms would be present in the poinsettia gene pool for AFLPs to be successful in distinguishing and determining genetic relationships among poinsettia cultivars.

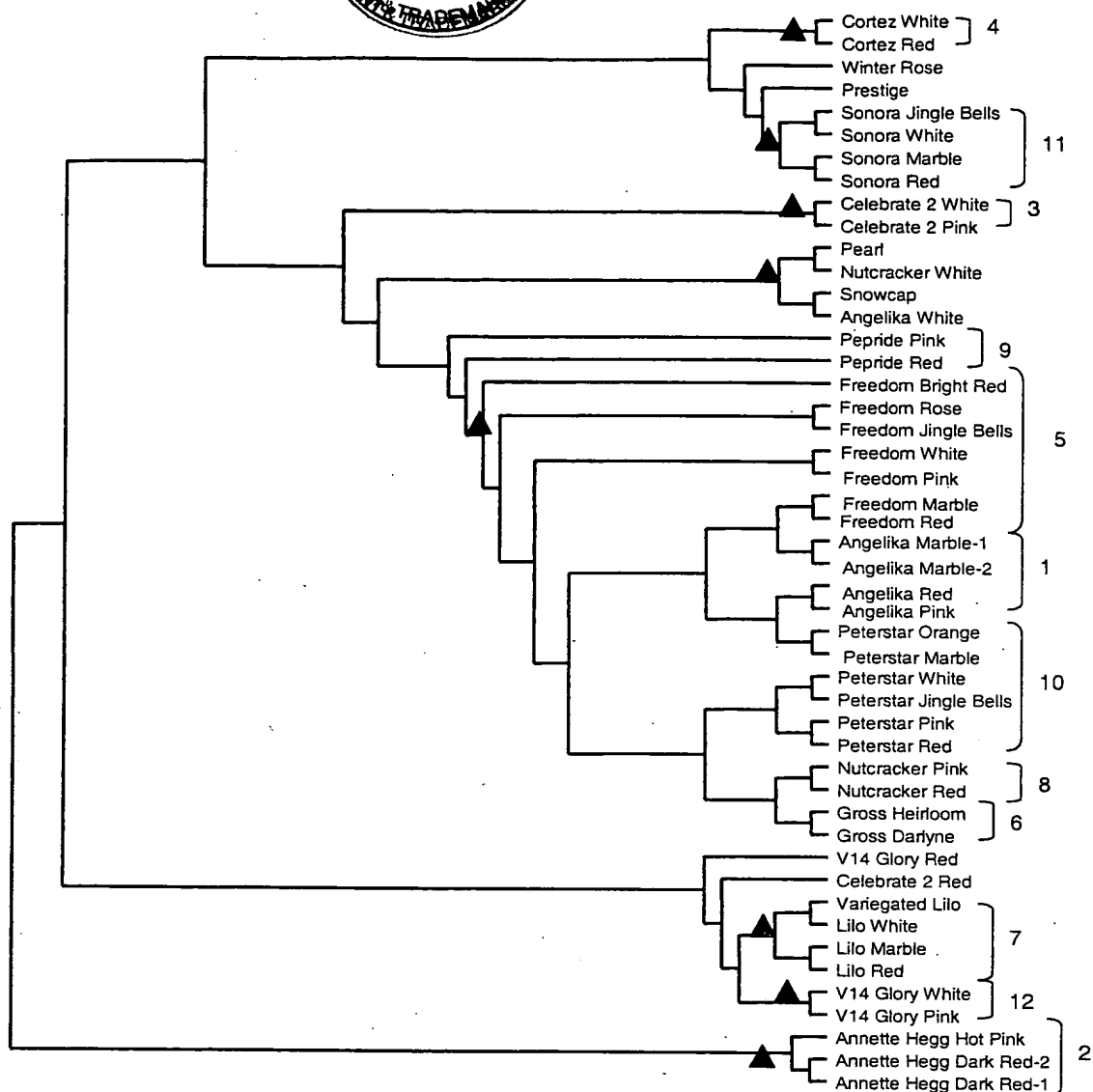
16. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


James W. Moyer, Ph.D.

5/19/05
Date

Attachment: Appendix A

APPENDIX I



Dendrogram of 44 poinsettia cultivars and 2 duplicates generated with microsatellite data using shared allele distance and Neighbor-Joining clustering. Brackets and numbers denote cultivar groups. Triangles denote clusters of cultivars with a distance of 0.

haploid [Gk. *haploos*, single]: Having only one set of chromosomes (n), in contrast to diploid ($2n$).

hardwood: A name commonly applied to the wood of a dicot tree.

Hardy-Weinberg law: The mathematical expression of the relationship between the relative frequencies of two or more alleles in a population; it demonstrates that the frequencies of alleles and genotypes will remain constant in a random-mating population in the absence of inbreeding, selection, or other evolutionary forces.

haustorium, *pl.* *haustoria* [L. *haustus*, from *haurire*, to drink, draw]: A projection of fungal hypha that functions as a penetrating and absorbing organ.

heartwood: Nonliving and commonly dark-colored wood in which no water transport occurs; it is surrounded by sapwood.

heliotropism [Gk. *helios*, sun]: See solar tracking.

hemicellulose (hēm'ī-sēl'ū-lōs): A polysaccharide resembling cellulose but more soluble and less ordered; found particularly in cell walls.

herb [L. *herba*, grass]: A nonwoody seed plant with a relatively short-lived aerial portion.

herbaceous: An adjective referring to nonwoody plants.

herbarium: A collection of dried and pressed plant specimens.

herbivorous: Feeding upon plants.

heredity [L. *heredis*, heir]: The transmission of characteristics from parent to offspring through the gametes.

hermaphrodite [Gk. for Hermes and Aphrodite]: An organism possessing both male and female reproductive organs.

hetero- [Gk. *heteros*, different]: Prefix meaning "other" or "different."

heterocyst [Gk. *heteros*, different, + *cystis*, a bag]: A transparent, thick-walled, nitrogen-fixing cell that forms in the filaments of certain cyanobacteria.

heteroecious (hēt'er-ē'shūs) [Gk. *heteros*, different, + *oikos*, house]: As in some rust fungi, requiring two different host species to complete the life cycle.

heterogamy [Gk. *heteros*, other, + *gamos*, union or reproduction]: Reproduction involving two types of gametes.

heterokaryotic [Gk. *heteros*, other, + *karyon*, kernel]: In fungi, having two or more genetically distinct types of nuclei within the same mycelium.

heteromorphic [Gk. *heteros*, different, + *morphe*, form]: A term used to describe a life history in which the haploid and diploid generations are dissimilar in form.

heterosis [Gk. *heterosis*, alteration]: Hybrid vigor, the superiority of the hybrid over either parent in any measurable character.

heterosporous: Having two kinds of spores, designated as microspores and megaspores.

heterothallic [Gk. *heteros*, different, + *thallus*, sprout]: A term used to describe a species, the haploid individuals of which are self-sterile or self-incompatible; two compatible strains or individuals are required for sexual reproduction to take place.

heterotroph [Gk. *heteros*, other, + *trophos*, feeder]: An organism that cannot manufacture organic compounds and so must feed on organic materials that have originated in other plants and animals; see also autotroph.

heterozygous: Having two different alleles at the same locus on homologous chromosomes.

Hill reaction: The oxygen evolution and photoreduction of an arti-

cial electron acceptor by a chloroplast preparation in the absence of carbon dioxide.

hilum [L. *hilum*, a trifle]: (1) Scar left on seed after separation of seed from funiculus; (2) the part of a starch grain around which the starch is laid down in more or less concentric layers.

histone: The group of five basic proteins associated with the chromosomes of all eukaryotic cells.

holdfast: (1) Basal part of a multicellular alga that attaches it to a solid object; may be unicellular or composed of a mass of tissue; (2) cuplike structures at the tips of some tendrils, by means of which they become attached.

homeo-, homo- [Gk. *homos*, same, similar]: Prefix meaning "similar" or "same."

homeostasis (hō'me-ō-stā'sis) [Gk. *homos*, similar, + *stasis*, standing]: The maintaining of a relatively stable internal physiological environment within an organism, or a steady-state equilibrium in a population or ecosystem. Homeostasis usually involves feedback mechanisms.

homokaryotic [Gk. *homos*, same, + *karyon*, kernel]: In fungi, having nuclei with the same genetic makeup within a mycelium.

homologous chromosomes: Chromosomes that associate in pairs in the first stage of meiosis; each member of the pair is derived from a different parent. Homologous chromosomes are also called homologues.

homology [Gk. *homologia*, agreement]: A condition indicative of the same phylogenetic, or evolutionary, origin, but not necessarily the same in present structure and or function.

homosporous: Having only one kind of spore.

homothallic [Gk. *homos*, same, + *thallus*, sprout]: A term used to describe a species in which the individuals are self-fertile.

homozygous: Having identical alleles at the same locus on homologous chromosomes.

hormogonium, *pl.* *hormogonia*: A portion of a filament of a cyanobacterium that becomes detached and grows into a new filament.

hormone [Gk. *hormaein*, to excite]: A chemical substance produced usually in minute amounts in one part of an organism, from which it is transported to another part of that organism on which it has a specific effect.

host: An organism on or in which a parasite lives.

humus: Decomposing organic matter in the soil.

hyaloplasm: See cytoplasmic ground substance.

hybrid: Offspring of two parents that differ in one or more heritable characteristics; offspring of two different varieties or of two different species.

hybridization: The formation of offspring between unlike parents.

hybrid vigor: See heterosis.

hydrocarbon [Gk. *hydro*, water, + L. *carbo*, charcoal]: An organic compound that consists only of hydrogen and carbon atoms.

hydrogen bond: A weak bond between a hydrogen atom attached to one oxygen or nitrogen atom and another oxygen or nitrogen atom.

hydrolysis [Gk. *hydro*, water, + *lysis*, loosening]: Splitting of one molecule into two by addition of the H^+ and OH^- ions of water.

hydrophyte [Gk. *hydro*, water, + *phyton*, a plant]: A plant that depends on an abundant supply of moisture or that grows wholly or partly submerged in water.

hydroxyl group: An OH^- group; a negatively charged ion formed by the dissociation of a water molecule.

Raven, et al., Biology of Plants, Worth Publ. NY, NY pp. 791 (1992)

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Comparative analysis of genetic similarity among maize inbred lines detected by RFLPs, RAPDs, SSRs, and AFLPs

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Abstract DNA-based fingerprinting technologies have proven useful in genetic similarity studies. RFLP is still most commonly used in the estimation of genetic diversity in plant species, but the recently developed PCR-based marker techniques, RAPDs, SSRs and AFLPs, are playing an increasingly important role in these investigations. Using a set of 33 maize inbred lines we report on a comparison of techniques to evaluate their informativeness and applicability for the study of genetic diversity. The four assays differed in the amount of polymorphism detected. The information content, measured by the expected heterozygosity and the average number of alleles, was higher for SSRs, while the lowest level of polymorphism was obtained with AFLPs. However, AFLPs were the most efficient marker system because of their capacity to reveal several bands in a single amplification. In fact, the assay efficiency index was more than ten-fold higher for AFLPs compared to the other methods. Except for RAPDs, the genetic similarity trees were highly correlated. SSR and AFLP technologies can replace RFLP marker in genetic similarity studies because of their

comparable accuracy in genotyping inbred lines selected by pedigree. Bootstrap analysis revealed that, in the set of lines analysed, the number of markers used was sufficient for a reliable estimation of genetic similarity and for a meaningful comparison of marker technologies.

Key words *Zea mays* L. · Genetic relationship · Molecular markers · DNA-fingerprinting · Genetic diversity

Introduction

Knowledge of germplasm diversity and of relationships among elite breeding materials has a significant impact on the improvement of crop plants (Hallauer et al. 1988). In maize, this information is useful in planning crosses for hybrid and line development, in assigning lines to heterotic groups, and in plant variety protection. It can be obtained from pedigree and heterosis data, from morphological traits or using molecular markers which detect variation at the DNA sequence level (Smith and Smith 1992). In particular, DNA-based polymorphisms are a powerful tool in the assessment of the genetic similarity between breeding stocks (reviewed in Lee 1995).

The discrimination power of restriction fragment length polymorphisms (RFLPs) has been extensively studied in maize, as has their use in establishing relationships with yield and heterosis (Melchinger 1993). However, there are several drawbacks to RFLPs that have stimulated the development of alternative marker systems: large quantities of DNA are in fact required for RFLP analysis, which is costly, and the technique is difficult to automate. Moreover, it requires sizeable laboratories and specialised equipment.

Various PCR-based marker techniques have recently been successfully introduced in the fingerprinting of plant genomes (Welsh and McClelland 1990; Kesseli

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et al. 1994) and in genetic diversity studies (Tinker et al. 1993). Among them, random amplified polymorphic DNA (RAPD) analysis is quick (Welsh and McClelland 1990; Williams et al. 1990) and well adapted for the efficient non-radioactive DNA fingerprinting of genotypes (dos Santos et al. 1994; Thormann et al. 1994). Problems with the reproducibility of amplification and with the scoring of error data have been reported for RAPDs (Demeke et al. 1997; Karp et al. 1997).

Eukaryotic genomes are interspersed with tandem repeats of DNA, referred to as microsatellites or simple sequence repeats (SSRs). SSR polymorphisms have been extensively used as genetic markers in mammals (Tautz 1989); they occur frequently also in plant genomes, showing an extensive variation in different individuals and accessions (Akkaya et al. 1992; Senior and Heun 1993; Wu and Tanksley 1993). SSR loci are co-dominant markers more informative than RAPDs and RFLPs (Russell et al. 1997). Specific technical developments are underway (Mitchell et al. 1997) that should result in the provision of SSRs that will be faster, more standardised and more effective than RFLP technology.

Amplified fragment length polymorphism (AFLP™) is a multilocus marker technique developed by Vos et al. (1995). AFLP markers are genomic fragments detected after selective PCR amplification which provide a number of appealing features in the fingerprinting of genomes of different complexity, including that of maize (Vos et al. 1995). The AFLP technique has been used to identify markers linked to disease resistance loci (Becker et al. 1995; Cervera et al. 1996), to fingerprint DNAs (Vos et al. 1995; Sharma et al. 1996), and to assess relationships between molecular polymorphism and hybrid performance in maize (Ajmone-Marsan et al. 1998).

A comparison of different marker techniques is timely, even though the utility of different molecular markers for soybean and barley germplasm has already been reported (Powell et al. 1996; Russell et al. 1997). The objectives of the present study were: (1) to compare the informativeness of different molecular markers and their applicability for genetic diversity analysis, genotype identification and variety protection purposes, (2) to determine the genetic similarity obtained with RFLP- and PCR-based techniques in a set of maize inbred lines, and (3) to compare their effectiveness in estimating genetic similarity among maize inbreds.

Materials and methods

Plant materials and DNA extraction

Thirty three inbred lines were chosen to explore the diversity of maize germplasm. All these inbreds have been extensively used in the production of hybrid seed and in maize breeding programs. Pedigree information was previously described in Livini et al. (1992). Based on

available information and on the heterotic behaviour in crosses, 13 (A641, B14 A, B37, B73, B84, Cm109 Lo1016, Lo916, Lo950, Lo951, Lo964, Lo999, and N28) can be associated with the Iowa Stiff Stalk Synthetic (BSSS) heterotic group, 13 (A619, C103, C123, H99, Lo881, Lo924, Lo976, Lo1077, Mo17, Oh43, Va22, Va59, and Va85) with the Lancaster Sure Crop (LSC), two to Wf9 (Wf9 and Pa91), three to W153R (W153R, Lo932, and Lo944), and two to HY (H55 and H96). Genomic DNA was isolated from a bulk of 20–30 shoots of 7–9-day old germinated seedlings and extracted using the CTAB method as previously described (Livini et al. 1992).

Nucleic-acid manipulation and molecular-marker assays

Conditions for restriction enzyme digestion, gel electrophoresis for RFLP, Southern transfer hybridisation, and autoradiography followed Livini et al. (1992). Forty seven genomic clones from the UMC and BNL collections and two restriction enzymes (*EcoRI* and *HindIII*) were used to characterise 53 RFLP loci in the 33 inbred lines. A total of 253 RFLP bands were binary coded as 1 or 0 for the presence or absence of such loci in each line, respectively.

RAPD amplification was performed as described by Ajmone-Marsan et al. (1993) using a Perkin Elmer 9600 Thermal Cycler. Reaction products were analysed by electrophoresis on a 2% agarose gel and stained with ethidium bromide. A total of 85 primers (Operon Technologies, California, USA) were surveyed in two inbred lines. Twenty five primers showing reproducible, and clearly scorable, polymorphic (present or absent) fragments, were used to fingerprint the 33 inbreds.

The primers for the SSR markers were synthesised according to the sequences published by Senior and Heun (1993) and Taramino and Tingey (1996). SSR procedures were those described by Taramino and Tingey (1996). Processed fragments, along with loading dye and internal size standards, were run out on a 6% acrylamide gel (Pfeiffer et al. 1997) using an Automated Laser Fluorescent sequencing electrophoresis unit (Pharmacia). Fragments were labelled with fluorescein by direct incorporation of F-12-dUTP (2-μM final concentration) during the PCR reaction. Un-incorporated labelled nucleotide was removed by ethanol precipitation prior to loading samples on the gel. Data were processed using Fragment Manager Software v. 1.1 (Pharmacia). SSR bands were sized first and then binary coded by 1 or 0 for their presence or absence in each line.

AFLP marker analysis was according to Vos et al. (1995). Briefly, total genomic DNA (400 ng) was restricted with 5 U of *EcoRI* (rare cutter) and 5 U of *MseI* (frequent cutter) (Pharmacia), and double-stranded adaptors ligated to the fragment ends. The structure of the adapter sequences, pre-amplification, amplification and polyacrylamide-gel electrophoresis conditions were as in Ajmone-Marsan et al. (1998). Polymorphic amplification products were visualised by autoradiography and scored manually. All AFLP polymorphisms were scored as dominant markers.

All names of the RFLP probes and the nucleotide sequences of the primers used for the amplification of AFLP, RAPD, and SSR markers are available on request.

Data analysis

The average number of alleles per locus, the allele frequency, the expected heterozygosity (H_e), and the effective number of alleles per locus were calculated as reported by Morgante et al. (1994). The total number of effective alleles (N_e) surveyed by RFLP, RAPD, SSR, and AFLP analyses was calculated by summing the number of effective alleles of all the analysed loci as $N_e = \sum n_i(i)$. To compare the efficiency among the four methods, where RFLPs and SSRs generally detect multiple alleles and one band per assay, whereas RAPDs and AFLPs detect two alleles and multiple bands per assay,

an assay efficiency index (A_i) was calculated. A_i combines the effective number of alleles identified per locus and the number of the polymorphic bands detected in each assay as $A_i = Ne/P$, where Ne is the total number of effective alleles detected and P is the total number of assays performed for their detection.

The genetic similarities (GSs) from RFLP, RAPD, SSR, and AFLP data were calculated among all possible pairs of lines using the Dice similarity index as in Nei and Li (1979). The co-ancestry coefficient, f , between lines related by pedigree, was calculated as previously reported (Ajmone-Marsan et al. 1992). Cluster analyses were based on similarity matrices obtained with the unweighted pair group method using arithmetic averages (UPGMA) (Rohlf 1990) and relationships between inbred lines were visualised as dendrograms. For each dendrogram the co-phenetic coefficients between the matrix of genetic similarities and the matrix of co-phenetic values were computed using appropriate routines of the NTSYS-pc package. The significance of the co-phenetic correlation observed was tested using the Mantel matrix correspondence test (Mantel 1967).

The bootstrap procedure was employed to determine the sampling variance of the genetic similarities calculated from the data sets obtained with the different marker systems. All data, irrespective of the dual or multiallelic nature of the marker system, were scored in the form of a binary matrix. For each pair of inbreds, the Dice similarity index (GS) was calculated from the 2000 random subsamples at different sample sizes (10, 50, 100, 150, 200, and all bands when the total exceeded 200). Bootstrap standard deviation estimates were based on 2000 samples. The calculations were performed with the SAS macro "BOOT" (Jackknife and Bootstrap Analyses, SAS Institute Inc.).

Results

Levels of polymorphisms

The 33 inbred lines were surveyed with the four different marker systems. All of the molecular markers were able to uniquely fingerprint each of the inbred lines. The levels of polymorphism detected with each marker system and the index comparing their informativeness are reported in Table 1. The total number of assays ranged from only six primer combinations for AFLPs to 53 probe/enzyme combinations for RFLPs. The total number of polymorphic bands identified ranged from 90 for RAPDs to 253 for RFLPs. An average number of 4.8 alleles per locus, with an average effective

number of 3.2 alleles per locus, ranging from 1.2 to 6.5, could be distinguished for each probe/enzyme combination using RFLPs. This value increased to 6.8 with SSRs, with an average number of effective alleles of 4.4 per locus, ranging from 1.1 to 6.6, while for RAPDs and AFLPs these values were lower (1.6 for both). This was reflected also in lower expected heterozygosity values. Overall the highest assay efficiency index was observed for AFLPs (61.9) and the lowest for RFLPs (3.2). RAPDs and SSRs (5.8 and 4.4, respectively) were comparable to RFLPs. In particular, for AFLPs the high assay efficiency index is due to the simultaneous detection of several polymorphic bands in a multiplex amplification per single reaction.

Genetic similarity

A summary of the genetic similarity estimates, calculated for each marker system, between pairs of lines of the various heterotic groups is shown in Table 2. All marker systems indicated that lines of BSSS origin were more similar in comparison to inbred lines of other heterotic groups. The mean value of the GS estimate was, as expected, lower for BSSS \times LSC crosses than within the BSSS and LSC groups themselves. This is consistent with the common practice in maize breeding of preferentially developing hybrids between heterotic groups because they are expected to perform better than those from crosses within heterotic groups. The similarity ranged from 0.92 within LSC types, using AFLPs, to 0.00 within BSSS \times miscellaneous types, using SSRs. The estimates of GS follow the same pattern across marker systems, i.e. higher estimates of similarity within the BSSS types and lower estimates within the LSC \times miscellaneous types. Overall SSRs revealed the lowest similarity values and AFLPs the highest.

The genetic similarity trees produced from each marker system are presented in Fig. 1. In these trees inbreds were ordered as expected, though with exceptions, into the major groups BSSS and LSC.

Table 1 Level of polymorphism and comparison of informativeness obtained with RFLP, RAPD, SSR and AFLP markers in 33 maize inbred lines

Parameters	Marker system			
	RFLP	RAPD	SSR	AFLP
Number of assay units	53 (probe/enzymes)	25 (primers)	27 (primer pairs)	6 (primer combination)
Number of polymorphic bands	253	90	183	232
Number of loci	53	90 ^a	27	232 ^a
Average number of alleles per locus	4.8	2.0	6.8	2.0
Expected heterozygosity	0.63	0.36	0.72	0.34
Effective number of alleles per locus	3.2	1.6	4.4	1.6
Assay efficiency index	3.2	5.8	4.4	61.9

^aTheoretical maximum number of loci

Table 2 Mean, minimum and maximum of the Dice genetic similarity coefficient (GS) calculated from different molecular marker systems for various groups of maize inbred lines

Marker system		GS value						
		Within heterotic groups			Between heterotic groups			Between all lines ALL (n = 528)
		BSSS (n = 78)	LSC (n = 78)	MISC (n = 21)	BSSS × LSC (n = 169)	BSSS × MISC (n = 91)	LSC × MISC (n = 91)	
RFLP	Min.	0.28	0.25	0.23	0.18	0.20	0.18	0.18
	Max.	0.79	0.86	0.90	0.59	0.49	0.56	0.90
	Mean	0.48	0.40	0.41	0.36	0.36	0.35	0.37
RAPD	Min.	0.34	0.38	0.31	0.37	0.36	0.29	0.29
	Max.	0.90	0.80	0.89	0.76	0.65	0.68	0.91
	Mean	0.64	0.57	0.53	0.58	0.53	0.53	0.56
SSR	Min.	0.13	0.08	0.08	0.07	0.00	0.04	0.00
	Max.	0.84	0.88	0.82	0.52	0.52	0.40	0.88
	Mean	0.38	0.31	0.28	0.27	0.22	0.20	0.26
AFLP	Min.	0.45	0.43	0.43	0.36	0.43	0.39	0.36
	Max.	0.89	0.92	0.89	0.61	0.64	0.62	0.92
	Mean	0.62	0.59	0.55	0.48	0.52	0.51	0.53

Discrepancies in forming subgroups within the major groups were observed as well as in the clustering of inbred lines of miscellaneous origins. Considering the BSSS-related lines the topology of each tree is unique with some evident similarity: the clustering of B14, B37, and B73 is, for example, fully conserved. On the LSC side, clustering was consistently reported by all methods with the exception of Va22, a line derived from C103, indicating that all methods aggregated lines of different origin. The Oh43-related lines (Oh43 and A619) were positioned within the Lancaster group only by RAPDs and AFLPs, while SSRs and RFLPs clustered these with BSSS lines (although Oh43 is usually considered a Lancaster type). Similarly to the RAPD-based tree, the clustering based on AFLP data produced a tree with a relatively narrow range of similarity values between the more-related and the more-distant pairs of inbreds. In spite of this, all the main clusters were confirmed by AFLP data.

Four pairs of very similar inbreds (B14 A, Cm109; Lo932, Lo944; A619, Oh43; and H55, H96) were clustered together by all marker systems, while in one additional case similar lines (Lo916 and Lo999) were consistently grouped in AFLP, SSR and RAPD trees.

Comparison between marker systems

All the estimates of correlation coefficients (r_s) among available co-ancestry coefficients (f_s) and genetic similarity (GS) data were highly significant ($P < 0.01$). RAPDs showed the lowest correlation ($r = 0.40$) with f values, RFLPs and SSRs intermediate values ($r = 0.57$ and $r = 0.53$, respectively), while AFLPs showed the highest value ($r = 0.62$). The r_s among

similarity data were also significant. Correlation coefficients of RAPD marker data ($r = 0.51$, $r = 0.57$, and $r = 0.52$ with RFLP, SSR and AFLP, respectively) with those obtained using other marker systems were lower than those among similarity estimates based on AFLPs, RFLPs, and SSRs ($r = 0.70$, $r = 0.67$ and $r = 0.59$, respectively between AFLP and RFLP, AFLP and SSR, and RFLP and SSR). The extent to which similarities were correlated varied considerably across the whole data set. When the set of pairwise data (528) was divided into two groups (according to the arithmetic mean of the observed GS range based on RFLP data: "more similar" lines with $GS > 0.37$ and "less similar" lines with $GS < 0.37$), it became evident that the genetic similarities estimated by different marker systems were mainly correlated only among similar lines, while the relationships among dissimilar lines were low and not significant. The GS values plotted against the estimate of co-ancestry value based on pedigree data followed the same pattern.

The co-phenetic correlation coefficients provided for each marker system indicate the extent to which the clustering of genotypes depicted in the trees accurately represents the estimates of genetic similarity between inbreds obtained with that marker system. Overall the co-phenetic coefficients were medium to high, with the RFLP (0.84) and AFLP (0.83) data resulting in the highest correlation, SSR (0.80) showing an intermediate value, and the RAPD (0.72) assay producing the lowest correlation.

All methods could clearly distinguish all 33 inbred lines, although the SSR data provided the highest level of discrimination between any pair of inbreds. In general, the grouping agreed with the pedigree information of the lines, although some discrepancies were

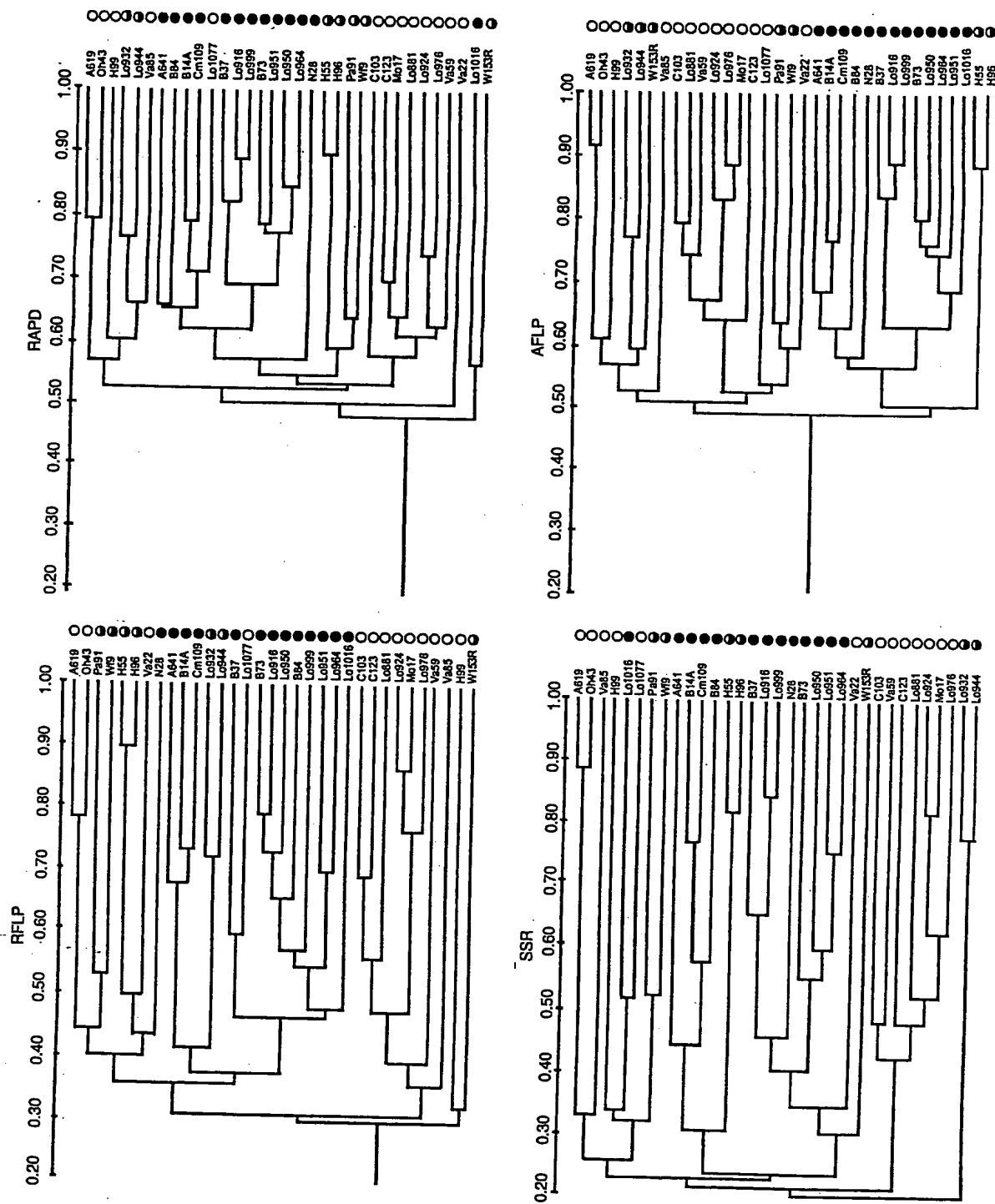


Fig. 1 Dendrograms of 33 inbred lines obtained using the RFLP, RAPD, SSR and AFLP marker systems (● = BS, ○ = SS, ● = MISC).

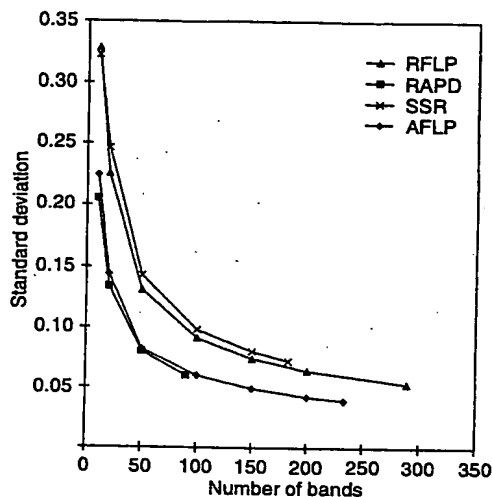


Fig. 2 Variation assessed by bootstrap sampling of genetic similarity between maize inbreds across different marker systems due to the different number of markers (bands)

observed. In particular, genetic similarities based on AFLP data had the highest correlation with pedigree data, while those based on RAPDs had the lowest one.

Bootstrap analysis

To determine the sampling variance of genetic similarities calculated from different molecular marker data sets, bootstrap analysis with a declining number of bands was performed. The relationships between number of bands and the sampling variance of the genetic similarity among all pairs of inbred lines for each method is presented in Fig. 2. The results indicated that above 150 bands there was a diminishing return in the precision gained by adding additional bands. As the number of bands moves below these thresholds the standard deviation begins to increase (and precision decreases) at a greater rate.

Discussion

In this paper we have shown that the number of alleles detectable in maize by SSRs is higher in comparison to other methods. This high level of polymorphism is to be expected because of the unique mechanism responsible for generating SSR allelic diversity by replication slippage (Tautz et al. 1986). It is also known that when SSRs have been compared to other marker systems they have revealed the highest level of polymorphism (Wu and Tanksley 1993; Morgante et al. 1994; Powell et al. 1996). The present data indicate that on average SSRs

carry two-fold more information than AFLPs and RAPDs, and 40% more information than RFLPs, when the number of alleles per locus is the target.

In agreement with previous observations (Becker et al. 1995), the lowest degree of polymorphism was associated with AFLPs. Conversely, the information measured as the assay efficiency index, which correlates with the number of effective alleles identified per assay, was more than ten-fold higher for AFLPs compared to the other methods. These findings are in good agreement with previous germplasm analysis carried out in several crop species (Lu et al. 1996; Powell et al. 1996). It can be concluded that SSRs are capable of revealing the highest level of information per single marker and that AFLPs detect the highest number of polymorphisms in a single assay. This high assay efficiency index is a reflection of the efficiency of AFLPs to simultaneously analyse a large number of bands rather than the levels of polymorphism detected at each locus. The assay efficiency index for SSRs can, however, be considerably higher if multiplex PCR and gel-running procedures are adopted, where several microsatellites are simultaneously amplified and co-electrophoresed using multicolour fluorescent technologies (Lindqvist et al. 1996; Heyen et al. 1997). An additional advantage of SSRs over AFLPs is only relevant when mapping populations are derived from outcrossing heterozygous individuals, where the multi-allelism of SSR markers increases the number of informative genotypic classes in the progenies compared to the binary AFLP markers.

The results shown by genetic similarity trees indicate that, except for RAPDs, they are highly similar. In addition, trees from these molecular methods agree with the information obtained from pedigree data. Similarly, Powell et al. (1996) found the lowest correlations among RAPDs and other marker systems. In this respect, it has been shown that RAPD analysis, based on the use of random primers, is likely to suffer from a lack of reproducibility due to mismatch annealing (Neale and Harry 1994). In the trees obtained from cluster analysis, all lines with defined affiliation to one of the heterotic groups were assigned to their specific main clusters, in agreement with the available data for maize (Ajmone-Marsan et al. 1992; Livini et al. 1992; Mumm and Dudley 1994; Smith et al. 1997). A second observation is that, within the clusters, the grouping of more distantly related lines does not match precisely with the expectations based upon pedigree data. Differences among marker techniques in grouping genetically more distant lines have been previously reported (Powell et al. 1996). Other studies in *Brassica* and from pea accessions show that molecular marker-based similarities and trees were significantly correlated across a wide range of germplasms (Thormann et al. 1994; Lu et al. 1996). Many potential reasons for these discrepancies exist, including underlying assumptions in calculating pedigree data (Messmer et al. 1993), genome sampling

(Nei 1987), and the numbers of markers or probes employed (Tivang et al. 1994).

The number of loci required for a reliable estimate of genetic similarity has been shown to vary from 15 RFLP probes, giving 56 bands in *Brassica* sp. (dos Santos et al. 1994), to 100 RFLP clone-enzyme combinations (Messmer et al. 1993). Similarly, Tivang et al. (1994), investigating in maize the sampling variance of a RFLP data set in maize, found that the number of bands required for a CV of 10% was 388, 150, and 38 for closely, intermediately, and distantly related inbreds, respectively. Our results using the bootstrap procedure suggest that 150 bands are sufficient for reliable estimates of genetic similarity. Accordingly, the average number of assays that could have been used in this study to attain such a precision in the estimate were 30–40 clone-enzyme combinations for RFLPs, 40–50 primers for RAPDs, 20–30 primers for SSRs, and 4–5 enzyme combinations for AFLPs. Based on these estimates, the disagreement of the RAPD results in comparison to the other types of markers might be explained by the insufficient number of primers used.

In conclusion, the results of this study indicate that, with the exception of RAPDs, the other DNA markers provide consistent information for germplasm identification and pedigree validation. We have shown that SSR and AFLP profiling technologies can be good candidates to replace RFLP markers in genetic similarity estimates and variety description, and that they have comparable accuracy in grouping inbred lines selected by pedigree. They are generally much simpler to apply and more sensitive than the traditional morphological and biochemical methods or the RFLP-based fingerprinting techniques; yet they provide results correlated with those from RFLP analyses. A major advantage of the SSR and AFLP methods is that they can be automated. While SSRs, thanks to their multi-allelism and co-dominance, appear to be suited for the analysis of outcrossing heterozygous individuals, AFLPs, with their high multiplex ratio, offer a distinctive advantage when genome coverage is a major issue due to the presence of linkage disequilibrium, such as in inbred lines and breeding materials.

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Direct comparison of levels of genetic variation among barley accessions detected by RFLPs, AFLPs, SSRs and RAPDs

Abstract RFLPs, AFLPs, RAPDs and SSRs were used to determine the genetic relationships among 18 cultivated barley accessions and the results compared to pedigree relationships where these were available. All of the approaches were able to uniquely fingerprint each of the accessions. The four assays differed in the amount of polymorphism detected. For example, all 13 SSR primers were polymorphic, with an average of 5.7 alleles per primer set, while nearly 54% of the fragments generated using AFLPs were monomorphic. The highest diversity index was observed for AFLPs (0.937) and the lowest for RFLP (0.322). Principal co-ordinate analysis (PCoA) clearly separated the spring types from the winter types using RFLP and AFLP data with the two-row winter types forming an intermediate group. Only a small group of spring types clustered together using SSR data with the two-row and six-row winter varieties more widely dispersed. Direct comparisons between genetic similarity (GS) estimates revealed by each of the assays were measured by a number of approaches. Spearman rank correlation ranked over 70% of the pairwise comparisons between AFLPs and RFLPs in the same order. SSRs had the lowest values when compared to the other three assays. These results are discussed in terms of the choice of appropriate technology for different aspects of germplasm evaluation.

Key words Barley · Genetic relationships · Molecular analysis · RFLP · AFLP · RAPD · SSR

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Introduction

As one of the first crop plants to be domesticated, barley (*Hordeum vulgare* L.) remains one of the most important crops today. Ranking fourth in world acreage, barley is used for human consumption, as a fodder crop and as a raw material for brewing beer and whisky (Brown 1992). It belongs to the genus *Hordeum*, which comprises over 32 species, including diploid and polyploid, perennial and annual types, which are spread throughout the world. The genus can be divided into three groups of varying importance to cultivated barley improvement; the primary gene pool (*H. vulgare* spp. *vulgare* and *H. vulgare* spp. *spontaneum*), the secondary gene pool (*H. bulbosum*) and the tertiary gene pool (all other *Hordeum* species). Presently more than 250,000 *Hordeum* accessions are held in genebanks throughout the world, and the number is increasing (IBPGR 1992). With the growth of the germplasm collection a need for procedures which will allow their more effective use is required. The 'Core Collection' concept, is one such method, which should provide users with a limited set of genetically distinct and representative accessions (Brown 1989). Recently this concept has been applied to barley, and the Barley Core Collection (BCC), consisting of a limited sample of accessions considered to represent the spectrum of genetic diversity available in the genus, was established (Hintum 1992).

In such collections, morphological data are the principle descriptors which have been used to detail the accessions held. With the development of molecular markers and their many perceived advantages, it is crucial that these techniques are applied to assess genetic diversity in germplasm collections in order to supplement and refine the morphological-based classification. However, in recent years, the number of molecular assays available for application in this area has increased dramatically, with each method differing in principle, in application, in the type and amount of polymorphism detected and in cost and time

requirements. The approaches include restriction fragment length polymorphism (RFLPs; Botstein et al. 1980), random amplified polymorphic DNA (RAPDs; Williams et al. 1990), simple sequence repeat polymorphisms or microsatellites (SSRs; Tautz 1989) and Amplified Fragment Length Polymorphism (AFLPs; Zabeau and Vos 1993).

Faced with this wealth of marker technology, it is appropriate to determine if the same patterns of variability are revealed by each and whether the observed molecular diversity reflects either co-ancestry or morphological classification. To address this we have evaluated and compared similarity measures obtained from the four above systems on a set of accessions which are representative of cultivated European barley germplasm. This has allowed us to compare the results obtained from molecular analysis with each other and with pedigree information. The results are discussed in relation to the overall genetic diversity observed and the features of the individual assays.

Materials and methods

Plant material and DNA isolation

Eighteen accessions (Table 1), representing the majority of ancestors European cultivated barley, were selected for this study. Total genomic DNA was isolated from fresh leaf material by a modification of the method described by Saghai-Marooft et al. (1984).

Marker analysis

RAPD

RAPD amplifications were performed as described by Barua et al. (1993). Fragments were separated on 1.5% agarose gels, stained with ethidium bromide, visualised with ultraviolet light and photographed. The presence or absence of polymorphic bands were scored. Twenty primers, which were polymorphic between the parents of a spring \times spring cross ('Blenheim' and E224/3), were used in this study.

RFLP

RFLP profiles were detected according to the protocol described by Graner et al. (1991). DNA was digested with three restriction enzymes (*Bam*HI, *Eco*RI and *Hind*III), and restriction fragments were detected using 48 single-copy DNA clones selected from previous mapping experiments to give good genome coverage and levels of polymorphism (Graner et al. 1991). RFLP patterns were scored as presence or absence of bands.

SSR

Two sources of simple sequence repeats were used in this study: database-derived repeats and repeats derived from an enriched genomic library. The 6 database-derived SSRs are described in a recent publication by Becker and Heun (1995). The 7 library-derived SSRs are described by Macaulay et al. (in preparation). SSR assays were performed as described by Morgante et al. (1994). Allele lengths were determined by comparing the most intense band with an M13 DNA sequence marker.

Table 1 Pedigree information and country of origin of 18 barley accessions used in molecular analysis

Cultivar	Pedigree	Origin ^a
Spring type, two-rowed:		
Aramir	Volla \times Emir	NL
Beka	Bethge XIII \times Kniefel	F
Golden Promise	X-ray mutant from Maythorpe (Irish Goldthorpe \times Maja)	GB
Grit	Langenstein-Nungesser (5547/67 \times 46459/68) 480/68 or Hadml. 554-Emir-11191-Union-46495-Diamant 14008	D
Hora	Sultan \times (Weihestephaner 1206 Nacktgerste \times Volla)	D
Krona	Complex cross including Triumph	D
Triumph	(Hadm.24566 \times Diamant \times 1402964/6) \times ((Alsa \times Abyssinian) \times St. \times Union)	D
Union	(Weihestephaner Mehtauresistente II \times Donaria) \times Firlbecks III	D
Volga	Complex cross with eight varieties	F
Winter type, two-rowed:		
Igri	(Malta \times Carlsberg 1427) \times Ingrid	D
Marinka	(Alpha \times SVP 674) \times Malta	NL
Romanze	Weihestephan 4622/73 \times (Malta \times Sonja)	D
Sonja	Tria \times Malta	D
Winter type, six-rowed:		
Borwinia	Vogelsanger Gold \times St. 7246	D
Express	Robur \times Athene	D
Franka	(Vogelsanger Gold \times Senta) \times (Dura \times Dea) \times Vogelsanger Gold	D
Gaulois	Gerbel \times Athene	F
Rondo	Tanaroo \times Sisfor L. 90	I

^a NL, The Netherlands; F, France; GB, Great Britain; D, Germany; I, Italy

AFLP

AFLP analysis was essentially as described by Vos et al. (1995). Briefly, 500 ng of genomic DNA was digested with *EcoRI* and *MseI* and double-stranded adaptors ligated to the fragment ends. This was followed by a pre-amplification step using non-selective primers. Selective amplifications were performed on the pre-amplified fragment mixture using a total of six primer combinations. Only the *EcoRI* primer was radiolabelled with γ -[^{32}P] ATP (ICN), and all primers had three selective nucleotides. Amplification products were separated by denaturing 6% polyacrylamide gel electrophoresis (PAGE), visualised by autoradiography and manually scored for the presence or absence of bands.

All of the primer names and sequences used are available on request from the authors.

Data analysis

Diversity values were calculated for each locus as $(1 - \sum P_i^2)$, where P_i is the phenotypic frequency for each assay unit (RFLPs-probe/enzyme combinations; RAPDs-primers; SSRs-primer pairs; AFLPs-primer combinations). Genetic similarities (GS) were calculated using the GENSTAT Version 531 software package according to Nei and Li's (1979) estimate of similarity. Similarities were expressed using the group average agglomerative clustering function of GENSTAT to generate principal co-ordinate plots (Kempton and McNicol 1990). Correlations between assays were calculated using [Procrustes rotational analysis (PR) on the principal co-ordinate data] Spearman rank correlation (SRC) and linear regression of the GS values.

Results

Fingerprinting

All of the molecular approaches used in this study were able to uniquely fingerprint each of the 18 cultivated barley accessions. The total number of assay units varied for each marker system from only 6 primer combinations for AFLPs to 144 probe/enzyme combinations for RFLPs (Table 2). Similarly, the number of bands scored ranged from 70 for SSRs to 299 for RFLPs. The percentage of polymorphic bands for each assay did not correlate to the total number of bands. For example, only 70 bands were scored for SSRs, which was the lowest number, but all 70 were polymorphic. In contrast, 297 AFLP bands were scored, and only 46.8% of those were polymorphic. RFLPs and

RAPDs were intermediate with 83.2% and 66.3%, respectively, of all bands scored being polymorphic. There was wide variation in the average number of genotypes revealed by each marker system (Fig. 1). With RFLPs, for each probe/enzyme combination, an average of 2.37 genotypic classes could be distinguished. With AFLPs this figure increased to 17.2 as nearly all primer combinations were able to discriminate between the 18 accessions used. This is further reflected in the diversity index measures. Overall the highest diversity index was observed for AFLPs (0.937), and the lowest for RFLPs (0.322). RAPDs and SSRs were intermediate (0.521 and 0.566, respectively).

Genetic similarity

The cultivated barley genepool can be divided into spring and winter types. The winter barleys are mainly used for fodder and can be further divided into two- and six-rowed types. The spring barleys are mainly used for malting. The maximum, minimum and mean similarity estimates between the spring barleys and two-row and six-row winter barleys for each assay system are shown Table 3. The similarities ranged from 0.97 within spring types using AFLPs to 0.45 within six-row winter types using SSRs. Between assay systems the estimates of similarity followed the same pattern, i.e. higher estimates of similarity within the spring types (means: RFLPs = 0.843, AFLPs = 0.924, SSRs = 0.829) and lower estimates within the six-row winter types (means: RFLPs = 0.70, AFLPs = 0.877, SSRs = 0.657). Estimates with two-row winter types were intermediate. The situation with RAPDs was different, with spring and six-row winter types exhibiting equivalent mean similarities (0.879 and 0.897, respectively). Overall, SSRs revealed the lowest similarity values (0.93–0.45) and AFLPs the highest (0.97–0.81).

Some accessions can be traced to common ancestors. For example, Grit and Triumph have Union in their pedigrees and Krona has Triumph. Our expectation would therefore be that these 4 accessions should be closely related. Table 4 shows the genetic similarity

Table 2 Analysis of the RFLP-, RAPD-, SSRs- and AFLP-generated banding patterns

Marker	Number of assay units	Total no of bands	Number of polymorphic bands (%)	Number of bands per assay unit	Number of phenotypes per assay unit	Diversity index
RFLPs	114 (42 probes, 3 enzymes)	299	249 (83.2%)	2.62	2.37	0.322
RAPDs	22 (primers)	107	71 (66.3%)	4.86	3.41	0.521
SSRs	13 (primer pairs)	70	70 (100%)	5.38	5.38	0.566
AFLPs	6 (primer combinations)	297	139 (46.8%)	49.5	17.2	0.937

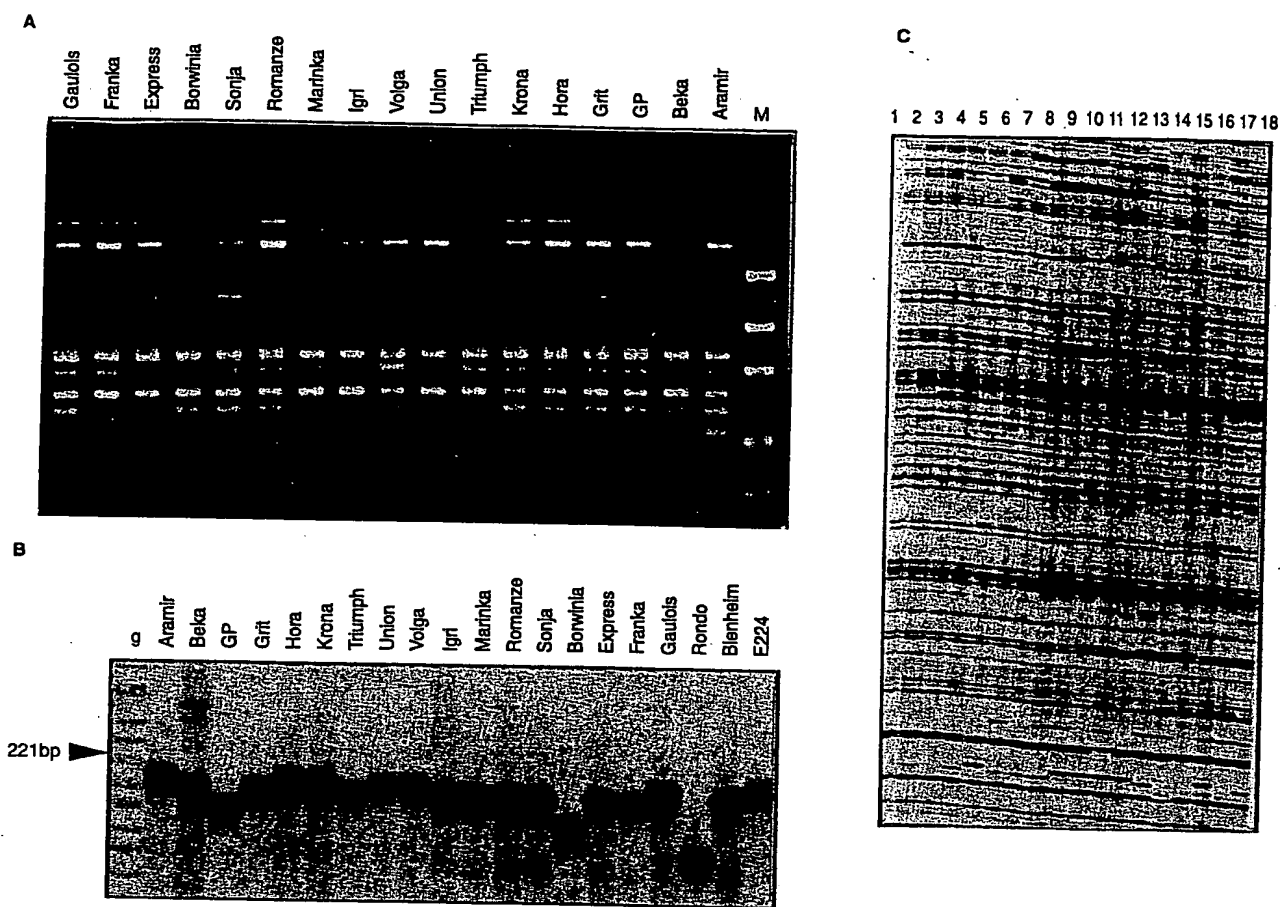


Fig. 1A–C An example of the different information content observed with RAPDs (A), SSRs (B) and AFLPs (C)

values for the comparisons of these 4 accessions with each of the molecular assays. With RFLPs, AFLPs and SSRs the genetic similarity values were higher than the mean values for all the spring types, and the highest similarity was between Triumph and Grit (RFLPs 0.93, AFLPs 0.97, SSRs 0.97). From the pedigree information in Table 1, Triumph and Grit share a number of

parental lines including Union, Diamont and Hadm. With RAPDs, the genetic similarity values were less than the average, although the Triumph and Grit comparison was again the highest.

The genetic similarity values for the two-row winter varieties were intermediate between the spring and six-row winter types for RFLPs, AFLPs and SSRs. Sonja and Romanze were more similar than the other two-row winter types with values of 0.84 (SSRs), 0.93 (AFLPs), 0.89 (RFLPs) and 0.94 (RAPDs). This was not

Table 3 Maximum, minimum and mean genetic similarity estimates calculated from RFLP, RAPD, SSRs and AFLP data for winter and spring types

	RFLPs			RAPDs			AFLPs			SSRs			Parentage		
	Max	Min	Mean	Max	Min	Mean	Max	Min	Mean	Max	Min	Mean	Max	Min	Mean
Spring	93.0	76.0	84.3	95.0	84.0	87.9	97.0	88.0	92.4	93.0	66.0	82.9	0.330	0.020	0.133
Two-row winter	89.0	81.0	83.8	95.0	86.0	91.7	93.0	98.0	91.0	84.0	56.0	71.3	0.290	0.100	0.212
Six-row winter	85.0	60.0	70.0	95.0	88.0	89.7	91.0	81.0	87.7	90.0	45.0	65.7	0.350	0.000	0.111

Table 4 Genetic similarity values for the comparisons of 4 spring accessions with each of the molecular assays

	Grit	Krona	Triumph	Union	Maximum	Minimum	Mean
RAPDs:							
Grit	100.0						
Krona	88.0	100.0					
Triumph	90.0	85.0	100.0				
Union	88.0	88.0	84.0	100.0	95.0	84.0	87.9
RFLPs:							
Grit	100.0						
Krona	85.0	100.0					
Triumph	93.0	88.0	100.0				
Union	87.0	87.0	86.0	100.0	93.0	76.0	84.3
AFLPs:							
Grit	100.0						
Krona	91.0	100.0					
Triumph	97.0	92.0	100.0				
Union	93.0	94.0	94.0	100.0	97.0	88.0	92.4
SSRs:							
Grit	100.0						
Krona	84.0	100.0					
Triumph	97.0	87.0	100.0				
Union	69.0	70.0	94.0	100.0	97.0	66.0	82.9

unexpected as the co-efficient of parentage values were also the highest (0.290 for Sonja \times Romanze compared to the mean for two-row winter type of 0.212). Both Sonja and Romanze are related through Malta, and Romanze has Sonja in its pedigree. The lowest genetic similarity values were observed for comparisons with Rondo.

Genetic relatedness

Associations among the 18 accessions were revealed by principal co-ordinate analysis (PCoA) (Fig. 2). The PCoA for the combined data (775 bands) clearly separated the winter from the spring accessions. Among the winter types, the two-rowed and six-rowed varieties formed two distinct groups, with the two-rowed types forming an intermediate group between the spring and six-rowed winter types. In the PCoAs generated by RFLP (299 bands) and AFLP (297 bands) data, a similar arrangement was observed. From the RAPD data, three distinct groups were again observed, although the spring types were more dispersed. Only a small group of spring types clustered together using SSR data, and two-row and six-row winter types were again more dispersed. On all of the PCoAs, Rondo appears in a remote position. In addition, 'Volga', a spring variety, was positioned between the rest of the spring and the two-rowed winter types.

Comparison between assays

To compare the results obtained with the four techniques, we tested correlations using Procrustes rotation

(PR), linear regression of the pairwise GS values (LR) and Spearman rank correlation (SRC). The results for SRC (which compares how each system ranks pairwise similarities) are shown in Table 5. Comparisons using PR and LR showed the same general trends although the overall correlations were lower. Over 70% of the pairs of genotypes were ranked in the same order with RFLPs and AFLPs. This correlation is reduced to 10.9% when comparing RAPDs with AFLPs. SSRs were intermediate with over 50% of the genotypes ranking in the same order as that obtained with AFLPs and RFLPs.

Discussion

Given the proliferation of genetic markers, comparisons between techniques are inevitable. However, there is a need for such comparisons in order to decide on which technique is best suited to the issues being examined. In this study, three of the newer polymerase chain reaction (PCR)-based systems (RAPDs, SSRs and AFLPs) developed during the last 5 years have been compared with the well established RFLP system that was developed over 15 years ago. Each technique not only differs in principal, but also in the type and amount of polymorphism detected. The levels of polymorphism between the four techniques varied widely, ranging from a maximum of 100% (SSRs) to only 48.6% (AFLPs). Similar results were observed when Rus-Kortekaas et al. (1994) directly compared SSRs with RAPDs in tomato where the level of polymorphism was 40% with RAPDs compared to 100% with

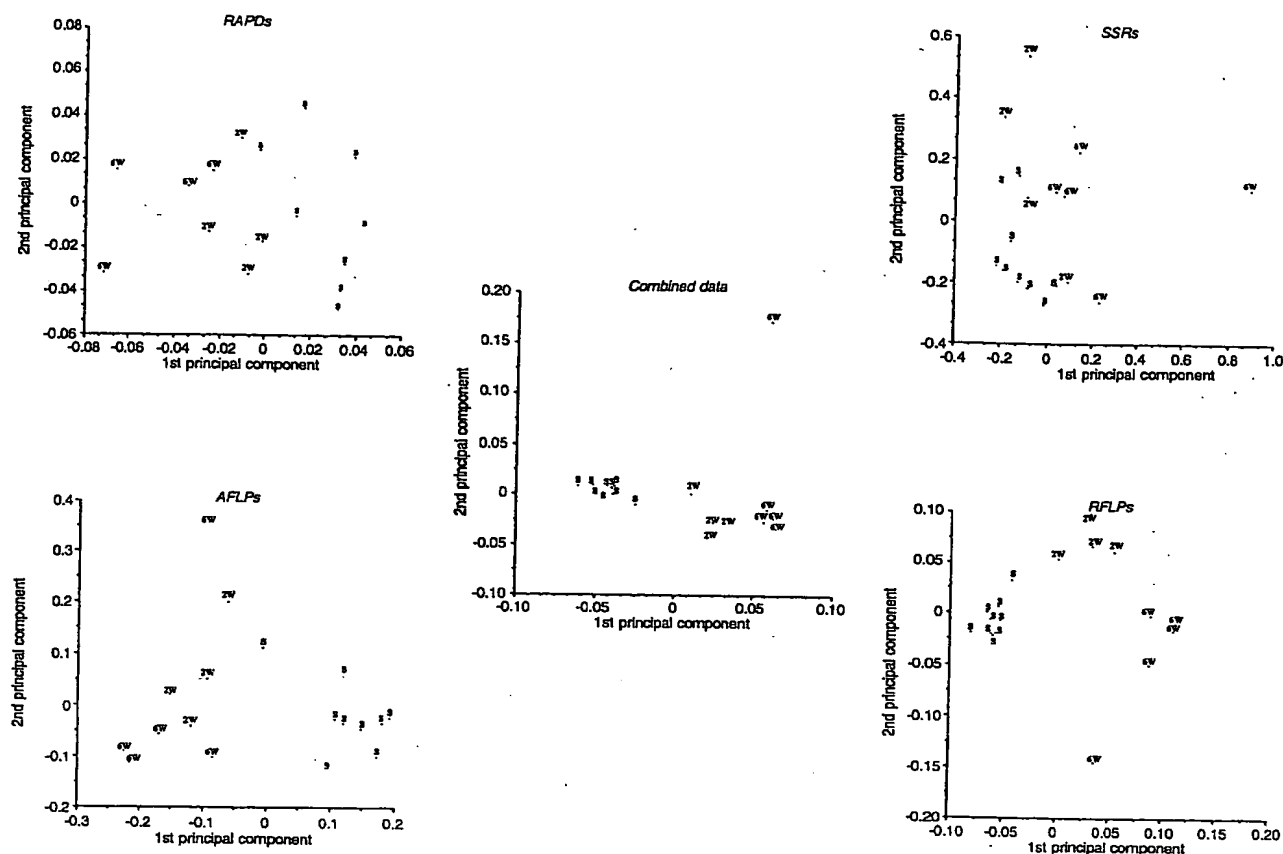


Fig. 2 Associations among the springs and winters cultivars revealed by principal co-ordinate analysis for each molecular assay

Table 5 Correlations obtained using RFLPs, RAPDs, AFLPs and SSRs based on Spearman's rank correlation and Procrustes rotation

SSR	1.000			
AFLP ^a	0.515	1.000		
RAPD ^a	0.235	0.109	1.000	
RFLP	0.505	0.708	0.201	1.000
	SSR	AFLP	RAPD	RFLP

^a Rondo omitted from dataset for RAPD comparisons

SSRs. Indeed, whenever SSRs have been compared to other systems, they have always revealed the highest levels of polymorphism (Rus-Kortekaas et al. 1994; Salimath et al. 1995; Saghai Maroof et al. 1994; Powell et al. 1996; Maughan et al. 1995; Morgante et al. 1994; Wu and Tanksley 1993). The level of polymorphism detected using RFLPs in this study was higher (83.2%) than that observed in previous studies on barley using a similar selection of genotypes (46%) (Melchinger et al. 1994). This is probably due to pre-selection of

polymorphic RFLP probes. The lowest level of polymorphism was associated with AFLPs. Becker et al. (1995) also observed that levels of polymorphism revealed by AFLPs were lower than by RFLPs. However, although AFLPs do not offer the highest level of polymorphism, they are the most efficient because they have the capacity to reveal many polymorphic bands in a single lane. The average number of bands per lane or per PCR for AFLPs was 49.5, compared to 1.0 band per lane or PCR for SSRs. Thus, when the overall diversity indices of the four techniques were compared, AFLP was the highest (0.937). Powell et al. (1996) introduced the concept of Marker Index as an overall measure of marker efficiency, and they demonstrated that, in *Glycine*, AFLPs had the highest Marker Index compared to other available marker systems. The high Marker Index or diversity index is a reflection of the efficiency of AFLPs to simultaneously analyse a large number of bands rather than the levels of polymorphism detected.

Barley germplasm can be divided into two genepools, winter and spring, based on morphology distinctions. Melchinger et al. (1994) using RFLPs observed a clear separation between the spring and winter

types. In this study, similar results were observed using RFLPs, AFLPs, RAPDs and SSRs. Furthermore, Melchinger et al. (1994) noted that sub-groups were also apparent for accessions with similar pedigrees, such as the compact grouping of two-row winter types intermediate between the spring and six-row winter types. With the exception of the SSR data, the two-row winter types form a sub-group between the six-row winter and the spring types for RFLP, AFLPs and RAPDs. With the SSR data there is a clear separation between the spring and winter types, but not within the winter types. This is not unexpected considering the low level of band sharing between accessions; even within groups the estimates of genetic similarity were much lower than any of the other assays.

Several previous studies have compared the use of RFLPs and RAPDs to examine genetic relatedness (Hallden et al. 1994; Thormann et al. 1994; Liu and Furnier 1993; dos Santos et al. 1994), and most of these show that RAPDs and RFLPs detect very similar relationships among the same group of accessions. Recently, other reports have compared RAPDs or RFLPs and SSRs on the same set of genotypes (Rus-Kortekaas et al. 1994; Wu and Tanksley 1993; Salimath et al. 1995; Maughan et al. 1995). Rus-Kortekaas et al. (1994) observed a lower percentage of band sharing in tomato accessions with SSRs compared to RAPDs and suggested that higher band sharing would make RAPDs more suitable for genetic relatedness studies. The results in this study would support the finding that SSRs may not be particularly well suited for pedigree relationship studies, although only a small number of SSRs were used.

Knowledge of genetic variation and the genetic relationship between genotypes is an important consideration for efficient rationalisation and utilisation of germplasm resources. Furthermore, it is important for the optimal design of plant breeding programmes, influencing the choice of genotypes to cross for the development of new populations. In barley, breeders have made crosses between highly selected genotypes with the result that the number of genotypes within the breeding gene pool is very small. According to Graner et al. (1994) better knowledge and measures of genetic similarity of accessions could help to maintain genetic diversity. In the past, indirect estimates of similarity based on pedigree information have been widely used in many species including barley. Such estimates may not always reflect the true relationships between accessions (Graner et al. 1994). In this study we have used molecular markers to determine direct measures of genetic similarity between individuals. The estimates varied from 0.97 (AFLPs) to 0.45 (SSRs). Melchinger et al. (1994) reported GS values of 0.79 for unrelated barley pairs, based on RFLPs. The RFLP results reported in this paper were similar to these. Also, Tinker et al. (1993) observed GS values in a set of 27 North American barley cultivars using RAPDs which were

similar to those found here (0.84–0.95). The values of GS based on SSRs in this present study are much lower than those based on RFLPs, AFLPs and RAPDs. Rus-Kortekaas et al. (1994) reported that the percentage of band sharing between tomato cultivars using SSRs was only 50.8% compared with 82.7% for RAPDs. Plaschke et al. (1995) observed even lower (0.31) estimates of genetic similarity when employing SSRs to examine wheat accessions and suggested that these low values are a reflection of the high information content provided by SSRs.

Although we have shown that molecular approaches can be used to group barley cultivars into morphologically distinct groups, and also further into sub-groups which have a similar genetic background, we have not addressed the issue of concordance of molecular-based estimates of GS and co-ancestry. Graner et al. (1994) compared RFLP-based estimates of GS with co-ancestry for a set of 48 cultivars. A very weak correlation was reported; $r_s = 0.21$ for winter and $r_s = 0.42$ for spring types. Similarly, using protein-based gliadin markers Cox et al. (1985) observed a correlation of $r_s = 0.27$. Both Graner et al. (1994) and Cox et al. (1985) agree that perhaps the reason for these poor correlations may be the high background similarity found for unrelated accessions using molecular markers. When related cultivars were used to investigate correlations between RAPD-based estimates of GS and co-ancestry a moderate correlation of $r_s = 0.61$ was observed between both measures (Tinker et al. 1993). Plaschke et al. (1995) observed similar results in wheat using SSR-based GS estimates and pedigree measures ($r_s = 0.55$). Although we have only a limited set of co-ancestry measures for the accessions studied here, several conclusions can be drawn from the correlations between molecular estimates of GS and the co-efficient of parentage. For example, the co-efficient of parentage for Rondo was 0 for all of the pairwise comparisons, and with all molecular measures Rondo had the lowest GS value. The low-to-moderate correlations between molecular measures of GS and pedigree estimates have led to the conclusion that pedigree information may not be as useful for certain applications for which they have been used in the past (Graner et al. 1994; Plaschke et al. 1995). In any case, molecular-based estimates of GS will provide more information than is available from pedigree information.

Having established that molecular-based estimates of GS will allow plant breeders to make informed decisions regarding the choice of genotypes to cross, we must ask the question as to which assay is most appropriate? Several studies have been described which address this question using isozymes, RFLPs and RAPDs (dos Santos et al. 1994; Thormann et al. 1994; Heun et al. 1994; Hallden et al. 1994). Heun et al. (1994) found that the correlation between RAPDs and isozymes among *Avena sterilis* accessions were moderately low

($r_s = 0.36$), although the overall representation of genetic relatedness was in considerable agreement. Beer et al. (1994) assessed genetic variation among *Avena sterilis* using morphological markers, isozymes and RFLPs and found a similarly low correlation ($r_s = 0.27$). A very different situation was observed among *Brassica* species. Thormann et al. (1994) reported correlations of $r_s = 0.969$ between RFLPs and RAPDs for a group of 18 accessions from different *Brassica* species. Dos Santos et al. (1994) also observed a significantly high correlation between RFLPs and RAPDs ($r_s = 0.745$) using genotypes within *Brassica oleracea*, although they did observe differences between the RFLP and RAPD dendrograms. When Spearman rank correlation was used, AFLPs and RFLPs ranked over 70% of the pairwise comparisons in the same order. This may well be because both techniques are based on restriction site changes, the major difference is that PCR is used in AFLPs rather than Southern analysis in RFLPs. In contrast SSRs and RAPDs have the lowest values when compared to the other assays. The low correlations observed with RAPDs could be a reflection of the choice of primers which we have previously used in the construction of a linkage map using a population derived from two related spring varieties. This may well have resulted in biased estimates of GS, which in turn has affected the ranking order of genotypes. For example, the lowest GS was between two spring types (Volga and Beka; $GS = 0.84$), whereas the lowest GS estimates for the other assays were between two winter types (even when Rondo was removed from all the data sets this still holds true).

The lack of correlation between SSRs and the other assays may not be fully unexpected, considering the high levels of polymorphism between pairwise comparisons. Powell et al. (1996) reported that SSRs were well-correlated with AFLPs and RFLPs at the interspecies level, however at the intraspecies level the correlation disappeared, emphasising the uniqueness of the SSR assay. Thus, while SSR analysis appeared to be the most polymorphic assay system, it did not seem to be particularly useful for assessing genetic relationships among cultivars. RFLPs were particularly valuable for assessing genetic relationships, but required several probe and enzyme combinations to discriminate between accessions. Both RFLPs and SSRs require an initial investment in terms of probe or sequence information, and according to Vos et al. (1995) the ideal fingerprinting assay should require no prior sequence knowledge. While only AFLPs and RAPDs meet these requirements, the lack of comparative information at each assayed locus (due to dominance) precludes an accurate assessment of true genetic relationships.

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In re: Moyer et al.

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APPENDIX C – RELATED PROCEEDINGS INDEX

(none)